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No. 04-495

In The Supreme Court Of The United States

REGINALD WILKINSON, et al.,
Petitioners,

v.

CHARLES E. AUSTIN, et al.,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: OCTOBER 8, 2003
CERTIORARI GRANTED: DECEMBER 10, 2004

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only selected docket entries.]

United States District Court
For The Northern District Of Ohio (Youngstown)
Civil Docket For Case #: 4:01-CV-01171-JG

Austin v. Wilkinson et al.

DOCKET ENTRIES

Filing Date	#	Docket Text
01/09/2001	1	Complaint for Declaratory Judgment and Injunctive Relief.
		* * *
03/30/2001	17	Answer to Complaint.
		* * *
04/09/2001	19	First Amended Complaint Adding New Parties.
04/09/2001	20	First Amended Complaint Adding New Party.
		* * *
05/10/2001	27	Answer to Amended Complaint
		* * *

02/25/2002	227	Opinion and Order signed by Judge James S. Gwin on 2/25/02 that the Court finds the plaintiff inmates have a liberty interest entitled to constitutional protection. Because of the length of placement in its severely restrictive conditions, incarceration at the OSP imposes an atypical and a significant hardship upon inmates. The defendants have violated the plaintiff class's right to due process by denying the plaintiffs adequate notice, adequate hearing, and sufficiently detailed decisions. Having found that the defendants violated, and will continue to violate, the plaintiffs' constitutionally protected liberty interest, the Court orders the parties to file, within fourteen days of the publication of this judgment, proposed injunctive orders, extending no further than necessary to correct the violation of the federal right set out in this opinion in a way that is the least intrusive means to correct the violation.
		* * *
03/26/2002	259	Order signed by Judge James S. Gwin on 3/26/02 previously the Court held that the defendants violated the plaintiff class's right to due process by denying the plaintiffs adequate notice, adequate hearings, and sufficiently detailed decisions

concerning their placement at the OSP. Because the defendants have violated the plaintiffs' constitutionally protected liberty interest, the Court orders the least intrusive means to correct the violation. The Court will retain jurisdiction over this matter for the purpose of enforcement. This injunction shall terminate in two years upon the motion of either party unless the Court finds that prospective relief is needed to correct an ongoing violation of a federal right.

03/26/2002	260	Judgment signed by Judge James S. Gwin on 3/26/02 that the Court has issued its injunctive order in the case. The defendants will submit proposed changes to Policy 111-07 in accordance with that order within thirty days for approval by the Court. This action is terminated under Rule 58 of the Federal Rules of Civil Procedure.

* * *

04/17/2002	268	Notice of Appeal to the USCA for the 6th Circuit from opinion and judgment dated March 26, 2002 filed by all defendants.

* * *

05/15/2002	284	Order signed by Judge James S. Gwin on 5/15/02 that having reviewed the defendants' proposed policy 111-07,

the plaintiffs' response to the policy, and the defendants' reply, the Court adopts the defendants' 4/24/02 proposed policy with the changes contained within this order.

* * *

07/12/2002	311	Order signed by Judge James S. Gwin on 7/12/02 denying defendants' motion seeking partial relief from judgment.

* * *

07/12/2002	313	Notice of Appeal to the USCA for the 6th Circuit from orders of May 15, 2002 (Doc. No. 284) and July 12, 2002 (Doc. No. 311) filed by all defendants.

* * *

12/23/2002	358	Motion for order to enforce Court's Orders of February 25, 2002, March 26, 2002, May 15, 2002, and July 12, 2002, filed by all plaintiffs.

* * *

05/15/2003	414	Order signed on 5/15/03 by Judge James S. Gwin. The Court grants the plaintiffs' motion to enforce in part and denies it in part. The Court finds that the defendants have violated parts of the Court's prior orders but it denies the plaintiffs' request for

further injunctive relief. Instead, it instructs the defendants to more rigorously observe the Court's Orders in all future reviews. Finally, because the Court modifies the Orders only to the extent necessary to maintain a status quo and because the Court denies the plaintiffs' request for further injunctive relief, the Court denies the defendants' contemporaneous motion to dismiss.

* * *

06/10/2003	419	Notice of Appeal (Filing Fee Not Paid) from order of May 15, 2003, filed by all defendants.

* * *

06/14/2004	453	Information copy of opinion from the USCA for the Sixth Circuit: The judgment of the District Court is partially affirmed and partially reversed, and the case is remanded to the District Court for further proceedings consistent with this opinion as to 268 Notice of Appeal (USCA# 02-3429) and 313 Notice of Appeal (USCA# 02-3816).

* * *

07/06/2004	459	True copy of mandate from the USCA for the Sixth Circuit: Affirming in part, reversing in part the judgment of the District Court and

remanding as to 268 Notice of Appeal (USCA# 02-3429) and 313 Notice of Appeal (USCA# 02-3816). Date issued as mandate 7/2/04, Costs: None (Related document 453).

* * *

12/15/2004	520	Letter from the Supreme Court of the United States dated 12/10/04 giving notice the petition for a writ of certiorari was granted.

[The following reproduction includes only selected docket entries.]

GENERAL DOCKET
U. S. Court of Appeals for the Sixth Circuit

No. 02-3429

CHARLES E. AUSTIN, Plaintiff-Appellee

v.

REGINALD A. WILKINSON, Director, et al., Defendant-Appellant

DOCKET ENTRIES

Date	Docket Text
4/19/02	Prisoner Case Docketed.
	* * *
7/25/02	ORDER filed to consolidate for briefing and submission cases 02-3429/3816.
	* * *
10/30/03	CAUSE ARGUED on 10/30/03.
	* * *

6/10/04	OPINION filed: AFFIRMED in part and REVERSED in part the district court's judgments, and REMANDED to the district court for further proceedings with this opinion.
6/10/04	JUDGMENT: AFFIRMED in part and REVERSED in part, and REMANDED.
7/2/04	MANDATE ISSUED with no cost taxed.
	* * *
12/13/04	U.S. Supreme Court letter filed granting petition for writ of certiorari [3072882-1] filed by Reginald Wilkinson, Reginald Wilkinson [02-3429, 02-3816] Supreme Court No. 04-495 in 02-3429, 02-3816. Filed in the Supreme Court on 12-10-04.

[The following reproduction includes
only selected docket entries.]

GENERAL DOCKET
U. S. Court of Appeals for the Sixth Circuit

No. 02-3816

CHARLES E. AUSTIN,
Plaintiff-Appellee

v.

REGINALD A. WILKINSON,
Director, et al., Defendant-Appellant

DOCKET ENTRIES

Date	Docket Text
7/25/02	Prisoner Case Docketed.
7/25/02	ORDER filed to consolidate for briefing and submission cases 02-3429/3816.
	* * *
10/30/03	CAUSE ARGUED on 10/30/03
	* * *
6/10/04	OPINION filed: AFFIRMED in part and REVERSED in part the district court's

	judgments, and REMANDED to the district court for further proceedings with this opinion.
6/10/04	JUDGMENT: AFFIRMED in part and REVERSED in part, and REMANDED.
7/2/04	MANDATE ISSUED with no cost taxed.
	* * *
12/13/04	U.S. Supreme Court letter filed granting petition for writ of certiorari [3072882-1] filed by Reginald Wilkinson, Reginald Wilkinson [02-3429, 02-3816] Supreme Court No. 04-495 in 02-3429, 02-3816. Filed in the Supreme Court on 12-10-04.

Joint Exhibit VII
4:01cv071

Ohio Department of Rehabilitation and Correction
ADMINISTRATIVE RULE

Institutions	5120-9-53	Classification and Reclassification of Inmates

(A) Whenever an institution receives an inmate from the reception center, pursuant to this rule 5120-9-52 of the Administrative Code, his recommended security level and classification programs shall be reviewed at the termination of the institution's orientation program by the institutional classification committee. the institutional classification committee shall represent various disciplines, and shall be designated by the managing officer in consultation with the director or his designee.

(B) The inmate's security level status programming shall be implemented unless the institutional classification committee determines that modification is necessary. In recommending modification, the institutional classification committee shall demonstrate that this recommendation is based upon the criteria specified in this rule 5120-9-52 of the Administrative Code.

(C) No inmate's custody security level status as described in rule 5120-9-52 of the Administrative Code, shall be permanently changed except upon the convening, by the managing officer, of a meeting of the institution classification committee. Any recommended change must be based upon the criteria in rule 5120-9-52 of the Administrative code, and is subject to the approval of the bureau of examination and classification if an institutional transfer is recommended,

as set forth in rule 5120-9-21 of the Administrative Code.

(D) The institutional classification committee shall have jurisdiction over reclassification, supervision level placement review, intra-institutional or inter-institutional administrative classification recommendation, furlough and community release screening.

(E) At all institutional classification committee hearings, the committee shall:

(1) Review the inmate's supervision level status, considering all current data with respect to selected post-commitment criteria.

(2) Reassess the inmate's needs, evaluate placement and progress and recommend desirable modifications to the inmate within a reasonable and specified period of time.

(3) Review the inmate for release eligibility consideration, pursuant to rule 5120-:1-1-20 of the Administrative Code.

(4) Initiate or continue an appropriate plan of treatment.

(5) Register within the master record file, notes of observed improvement or deterioration of character of the inmate, the method of treatment employed, orders or alterations affecting his standing or situation, and subsequent facts or personal history which may be officially brought to the knowledge of departmental staff bearing upon the propriety of the ere lease or paroled of the prisoner.

(F) The institutional classification committee shall review the supervision level of all inmates at time intervals established by the committee, but no less than annually.

(G) Whenever a change in supervision level or a material change in program is undertaken, a conference between the inmate and at least one member of the institution classification committee shall be held. The inmate, at least FORTY-EIGHT hours prior to the conference, unless he waivers notice, shall be notified of the purpose of the conference, and that he has the right to meet with at least one member of the committee, to make a statement if he desires, and to submit written statements.

(H) After the institutional classification committee conference with the inmate, the committee shall make a written summary of the conference and register the summary, including the responses the inmate on the mast record file. This committee will then recommend, for the approval for the managing officer, whether or not a supervision level change is appropriate. The inmate shall be notified orally of the recommendation of the committee and of his right to appeal the recommendation to the managing officer or his designee.

(1) Any additional written reports which are to be filed shall be determined by statute, judicial order, administrative rule, and/or the director or his designee.

(2) Transfer to another institution or classification change prior to committee haring shall be in accordance with rule 5120-9-21 of the Administrative Code.

(I) The inmate may further appeal the decision to the:

(1) Bureau of examination and classification within five days after being notified of an adverse decision. The appeal must state in detail the reasons for the appeal.

(2) The decision of the bureau of examination and classification shall be final.

(3) Implementation of any decision shall not be stayed pending appeal.

Effective date: January 8, 1991
Certified: George Wilson
Date: December 27, 1990
Former Rule Number; 5120-9-53
Promulgated Under: 111.15
Statutory Authority: 5120-01; 5120-16; 5120.11
Prior Effective dates: 11/10/75; 1/1/83; 7/18/83; 9/4/84

STATE OF OHIO

(SEAL)

DEPARTMENT OF
REHABILITATION
AND CORRECTION

SUBJECT:	PAGE 1 OF 12
LEVEL 4 / LEVEL 5 CLASSIFICATION FOR MALE INMATES	SECTION: 111- NUMBER: 07
RULE/CODE REFERENCE:	SUPERCEDES: 111-07 DATED 01/28/99
RELATED ACA STANDARDS	EFFECTIVE DATE: March 1, 2002
RELATED AUDIT STANDARDS:	APPROVED: January 3, 2002

I. AUTHORITY:

This policy is issued in compliance with Ohio Revised Code Section 5120.01 which delegates to the Director of the Ohio Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as he prescribes.

II. PURPOSE:

The purpose of this policy is to define the classification procedures for placing inmates in Level 4 and Level 5 security classifications.

III. APPLICABILITY:

This policy applies to all staff and male inmates involved in the classification process.

IV. DEFINITIONS:

Classification Level 4—A security level for inmates who are involved in, but not leading others to commit violent, disruptive, predatory or riotous actions, and/or a threat to the security of the institution as set forth in the established Level 4 criteria. This classification replaces the classification previously known as "maximum security." References to maximum security in the Administrative Code and other policies shall be construed as the equivalent of level 4.

Classification Level 5—A security level for inmates who commit or lead others to commit violent, disruptive, predatory, riotous actions, or who otherwise pose a serious threat to the security of the institution as set forth in the established Level 5 criteria. This classification replaces the classification previously known as "high maximum security." References to "high maximum security" in the Administrative Code and other policies shall be construed as the equivalent of "level 5."

Privilege Level B—The initial privilege level assigned to an inmate classified into Levels 4 or 5.

Privilege Level A—A less restrictive privilege level, which inmates may be placed into by the Privilege Level Review Committee, after a review of the inmate's status in Levels 4 or 5.

Seriously Mentally

Ill—Serious mental illness means a substantial disorder of thought or mood which significantly impairs judgement, behavior, capacity to recognize reality or cope with the ordinary demands of life within the prison environment and is manifested by substantial pain or disability. Serious mental illness requires a mental health diagnosis, prognosis and treatment, as appropriate, by mental health staff.

V. POLICY:

It is the policy and objective of the classification level system to create a process for the classification of inmates according to their security risk. This process shall consider behavior and such other objective factors as are available and relevant when assessing an inmate's institutional security needs. Inmates shall be placed at the lowest level of security possible that is still sufficient to ensure the safety and security of persons, the institution and the community. Inmates shall be placed at institutions that are consistent with their security classification rating. Inmates who classified as level five and are determined to be seriously mentally ill shall not be housed at the Ohio State Penitentiary but shall be housed at another facility as determined by the Director.

VI. PROCEDURES:

A. Placement in Level 4 or 5 from Reception

Inmates may be placed at Level 4 or 5 from Reception, based upon the results of the scoring of the Security Designation Form by the Reception Coordinator, recommended by the Warden/Designee and approved by the Bureau of Classification. The Reception Coordinator shall use

the Security Designation Long Forms, referenced at the end of this directive.

B. Placement in Level 4:

The Warden, Deputy Warden, Major, Unit Management Administrator (UMA), Unit Manager, Rules Infraction Board (RIB), or Reception Coordinator may initiate placement into the Level 4 Classifications. If the Department has already made an initial assignment following reception, the person initiating the placement shall use the Supervision Review Forms, referenced at the end of this directive. Once initiated, the Warden/Designee shall establish a classification committee pursuant to rule 5120-9-53 of the Administrative Code to review the inmate's behavior and determine if the inmate meets one or more of the following Level 4 criteria:

1. The inmate has demonstrated physically assaultive and/or predatory behavior resulting in physical harm/injury to any person.
2. The nature of the inmate's behavior presents a current threat to the security and orderly operation of the institution and safety of others.
3. The inmate has planned or participated in a serious disturbance or riot.
4. The inmate has possessed major contraband which poses a threat or danger to the institution. This includes but is not limited to: weapons, drugs, escape contraband, large amounts of currency.
5. The inmate has been identified by the institution Security Threat Group Coordinat

or as an active member involved in disruptive security threat group behavior.

6. The inmate escaped, attempted to escape or committed acts to facilitate an escape from a level 1 or 2 (or their equivalent, minimum or medium) security facility or while under supervision outside of the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plant.
7. The inmate has established an inappropriate relationship with a staff member.
8. The inmate through repetitive and/or seriously disruptive behavior has demonstrated an inability to adjust to Level 3 as evidenced by repeated class II rule violations.

The classification committee shall review the completed Supervision Review Form and any relevant information. The inmate is to be served with a Notice of Hearing Form (Form DRC2598) 48 hours prior to the hearing, and afforded the opportunity to appear before the entire committee, unless waived in writing, to offer any pertinent information, explanation and/or objections to Level 4 placement.

The inmate will also be afforded the opportunity to submit a written statement to the committee. The classification committee shall determine whether the inmate has met one of the criteria above and whether the inmate should be placed in level 4. The classification committee shall make a recommendation accordingly.

The Classification committee shall forward its recommendation to

the Warden/Designee. The Warden/Designee shall review the Supervision Review Form and all other information presented, and approve or disapprove the recommendation. If the warden approves the recommendation for level 4, he or she shall submit the recommendation to the Bureau of Classification for final disposition. The inmate may file a formal objection to the recommendation of the classification committee and warden with the Bureau of Classification within fifteen days. The Bureau of Classification will review the recommendation and any objections filed by the inmate, and make a final decision.

C. Placement in Level 5:

Placement into the Level 5 classification may be initiated by the Warden, Deputy Warden, Major, UMA, Unit Manager, RIB or the Reception Coordinator. The person initiating the placement shall use the Security Designation Long Form, referenced at the end of this directive. Once initiated, the Warden/Designee shall establish a classification committee to review the inmate's behavior and determine if the inmate meets one or more of the following Level 5 criteria:

1. The inmate has demonstrated physically or sexually assaultive and/or predatory behavior resulting in either serious physical injury or death to any person, or in an attempt to sexually assault any person, or to cause serious physical injury or death to any person. An inmate has demonstrated such behavior when the inmate has:
   - Physically assaulted another resulting in serious physical harm;
   -

Assaulted or attempted to assault another with a deadly weapon

- Compelled or attempted to compel another to perform sexual acts; engage in sexual conduct or sexual contact; or to submit to sexual contact; all by force or threat of force;
- Compelled or coerced another, by force or the threat of serious physical harm or death, to provide anything of value, to perform any act, or to violate any rule.

2. The nature of the criminal offense committed prior to incarceration constitutes a current threat to the security and orderly operation of the institution and to the safety of others, for example, serious assaults against law enforcement, participation in organized criminal activity or actions indicating a serious escape risk.
3. The inmate has lead, organized, or incited a serious disturbance or riot that resulted in the taking of a hostage, significant property damage, physical harm, or loss of life.
4. The inmate has conspired or attempted to convey, introduce or possess major contraband which poses a serious threat or danger to the security of the institution. This includes but is not limited to:
   - Deadly weapons
   - Ammunition
   - Escape instruments
   - Drugs for distribution
5. The inmate has been identified by the institution Security Threat Group Coordinator as a leader, enforcer, or recruiter of a security threat group, which is actively

involved in violent or disruptive behavior.

6. The inmate escaped, attempted to escape or committed acts to facilitate an escape from a level three or four (or their equivalent, close or maximum) security facility or while under supervision outside of the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plant.
7. The inmate has demonstrated an ability to compromise the integrity of staff, which resulted in a threat to the security of the institution.
8. The inmate knowingly exposed others to the risk of contracting a dangerous disease, such as HIV or hepatitis.
9. The inmate through repetitive and/or seriously disruptive behavior, has demonstrated a chronic inability to adjust to level 4B as evidenced by repeated class II rule violations.

The classification committee shall review the completed Supervision Review Form and any other relevant information. The inmate is to be served with a Notice of Hearing (Form DRC2598) 48 hours prior to the hearing, and afforded the opportunity to appear before the entire committee, unless waived in writing, to offer any pertinent information, explanation and/or objections to Level 5 placement. The inmate will also be afforded the opportunity to submit a written statement to the committee. The classification committee shall document informati

on presented by staff and the inmate (Forms DRC2627 and DRC2628). The classification committee shall determine whether the inmate has met one of the criteria above and whether the inmate should be placed in level 5. The classification committee shall make a recommendation accordingly, which shall be documented on the Classification Committee Report (Forms DRC2637, DRC2638, DRC2639).

The classification committee shall forward its recommendation to the Warden/Designee. The Warden/Designee shall review the Supervision Review Form and all other information presented, and approve or disapprove the recommendation. If the Warden approves the recommendation, he or she shall submit the recommendation and the approval to the Bureau of Classification for final disposition.

The inmate shall be notified of the warden's approval of the recommendation and may file a formal objection to the recommendations of the classification committee and warden with the Bureau of Classification within fifteen days of the date he is served with the committee's recommendation and warden's action. The Bureau of Classification will review the recommendation and any objections filed by the inmate, and make a final decision.

No inmate will be placed in level 5 who is determined to be seriously mentally ill, pursuant to the procedures of the department's bureau of mental health; or whose medical needs are inconsistent with that assignment, pursuant to Policy Directive 320-15, "Medical Classification."

D. Placement in Level 5 from Level 4

A classification Committee shall review the inmate's behavior and determine if the inmate meets at least one of the criteria for Level 5.

If the inmate's repetitive and/or seriously disruptive behavior has demonstrated a chronic inability to adjust to level 4B, the documentation must clearly reflect this. The classification committee must ensure that the documentation includes any repeated class II rule violations, information and/or descriptions of the inmate's behavior and how the behavior disrupted the operation of the housing unit, facility or its operation. For example:

- List any rule violations with dispositions and the dates of any violations within the previous twelve months.
- Detail the number of times it was necessary to use force to restrain or control the inmate.
- List the instances of disruptions to meal, recreation, shower or scheduled activities, etc.
- Detail the impact on other inmates, threats, disruptions, etc.

The classification committee shall complete the process as described in subsection C., above.

E. 30 Day Review/Orientation Process

Placement into Level 4 or Level 5 varies in length depending on the nature of the initiating incident, criteria for placement, and/or demonstrated behavior in assigned level. All inmates placed into these levels shall have a review of their classification level completed by an

assigned Unit staff member within 30 days of placement to determine if they have been properly classified. This review shall include a review of the inmate's file to ensure that proper documentation has been included detailing how/why the inmate has been classified into Level 4 or Level 5.

If the review finds that the inmate meets the appropriate criteria, Unit and/or programming staff will meet with the inmate to explain the classification and review processes and what the expectations are concerning his behavior, and appropriate program participation. This meeting will also afford the inmate the opportunity to request any needed assistance while assigned in the classification level. Staff will advise the inmate whether release to a general population institution in three years or less appears reasonably possible.

If the review finds that the inmate does not meet the Level 4 or Level 5 criteria, the reviewing staff member shall forward a written recommendation through the Deputy Warden of Operations, to the Warden recommending that the inmate be transferred to an appropriate institution. The reasons for the recommendation must be listed to reflect why the inmate is not appropriate for Level 4 or Level 5 and is more appropriate for another level.

If the Warden concurs with the recommendation, the packet will then be forwarded, along with a newly completed Supervision Review Form, to the Bureau of Classification for appropriate action. If the Warden disagrees with the committee's recommendation, the inmate remains at his current status and this decision is not appeallable.

F. Privilege Level Review Process

Inmates placed into Level 4 or 5 will initially be assigned to privilege level B (5B or 4B). They will remain in this level until recommended for reduction by the Privilege Level Review Committee, and approved by the Warden/Designee. Reductions from Privilege Level B to A do not require the Bureau of Classification's approval.

However, a Privilege / Security Level Review, Level 5B, 5A & 4B Form (Form DRC2634, DRC2636) must be completed, approved at the institution and entered into the DOTS system when a privilege level changes.

The privilege level review process—not to be confused with a Supervision Review—weighs both known behavior and future risk levels. The information reviewed during the assessment will include, but is not limited to:

- Program Involvement
- Current privilege level
- Time served in current privilege level
- Total time spent in level 5 and/or level 4
- Time left to spend on current sentence
- Time since last incident that resulted in inmate being designated level 5 or 4
- Conduct Reports
- Reason for placement
- Behavior in the last five years—Prior to Level 4 or 5 classification
- Security level when placed
- Adjustment/behavior after placement
- Interaction with others (staff and/or inmates)
- The offender recognizes and acknowledges factors contributing to the commission of the placement

offense and nature
- Other Factors which indicate a risk of future violence

The committee will use professional correctional judgment to evaluate the inmate's likelihood to repeat prohibited actions. The privilege level review will be in a narrative form to record the factors considered by the evaluating employee. The inmate will appear before the Privilege Level Review Committee to ensure that he has the opportunity to have input into the process and respond to questions the committee may have during the review. The Privilege Level Review Committee will consist of a Unit staff member, a Custody staff member, and a Warden's designee. They may consult with any other staff person (Mental Health, Medical, Executive Staff, etc.) during the course of the review process.

G. Privilege Level Review for Level 4

Inmates placed in level 4 shall receive privilege level reviews during the time between annual supervision reviews. The annual supervision review procedures are

more fully described below. The provisions of this section pertain only to privilege levels within the assigned security level.

Privilege level 4B is an entry level privilege status. Placement in 4B is for an indeterminate period. Inmates classified into Level 4B shall have an assessment completed every six months. Inmates who are in privilege level 4B and have been reviewed pursuant to this subsection may be placed in privilege level 4A.

The inmate will appear before the committee to discuss and review the placement issues. The inmate shall have the opportunity to present information, express his objections and explain his current classification. The committee will advise the inmate of their expectations and any steps the inmate can take to improve his eligibility for reduction. The first assessment will take place six months after the initial placement, and will continue every six months thereafter.

The Privilege Level Review Committee will make a recommendation to the Warden/Designee to either continue the inmate in 4B or reduce him to 4A, supported by a written rationale. The Warden/Designee shall then render a decision based on the Committee's recommendation. This decision is not appeallable. The Privilege Level Review Committee may also recommend a special supervision level review if that is warranted, in their judgment. Such special reviews must be approved by an individual who could initiate such a placement and shall follow the procedures described for an annual supervision review, described below.

H. Privilege Level Review for Level 5

Inmates placed in level 5 shall receive level reviews during the time between annual supervision reviews. The annual supervision procedures are more fully described below. The provisions of this section pertain only to privilege levels within the assigned security level. Inmates classified into Level 5B shall have an assessment completed every three months; inmates classified as Level 5A shall have an assessment completed every six months.

Placement in Level 5 is for an indeterminate period. Privilege level 5B is an entry level privilege status. Inmates who are in privilege level 5B and have been reviewed pursuant to this subsection may be placed in privilege level 5A.

The Privilege Level Review Committee will consist of three members, designated by the Warden/Designee, such as the inmate's Unit Manager, Case Manager (to comment on educational programming, and other programming), Mental Health staff, and/or a custody staff person.

The inmate will appear before the committee to discuss and review the placement issues. The inmate shall have the opportunity to present information, express his objections and explain his current classification. The committee will advise the inmate of their expectations and any steps the inmate can take to improve his eligibility for reduction. The first review for 5A inmates will take place six months after the initial placement, and will continue every six months thereafter. The first review for 5B inmates will take place three months after the initial placement, and will

continue every three months thereafter.

At the annual (one-year) review a Privilege / Security Level Review, Level 5B, 5A & 4B Form (Form DRC2634, DRC2636) will be completed — regardless of the recommendation — affording the inmate the normal classification review and appeals process.

The Review Committee will make a recommendation to the Warden/Designee to either continue the inmate in 5B, or to reduce him to 5A, supported by a written rationale. The Warden/Designee shall then render a final decision based on the Committee's recommendation. This decision is not appeallable. The Privilege Level Review Committee may also recommend a special supervision level review if that is warranted, in their judgment. Such special reviews must be approved by an individual who could initiate such a placement and shall follow the procedures described for an annual supervision review, described below.

I. Annual Supervision Review:

All Level 4 and Level 5 inmates will have supervision reviews completed at least annually. The classification Committee shall consist of three members, which may include the Deputy Warden of Operations/Designee, the Unit Management Administrator, a Unit Manager, a Case Manager and/or other Unit Staff member and may include a Mental Health staff. All annual reviews must include a Director's designee to review all pertinent information and make a recommendation.

The inmate is to be served with a Notice of Hearing 48 hours prior to the hearing, and afforded the opportunity to appear before the entire

committee, unless waived in writing, to offer any pertinent information, explanation and/or objections to Level 4 or 5 placement. The inmate will be afforded the opportunity to submit a written statement to the committee. The committee shall make a comprehensive review of the inmate's institutional adjustment and behavior, including his behavior since placement in level 5 in order to make an assessment of the risk to safety and security posed by such an inmate.

This committee shall review the completed Privilege/ Security Level Review, Level 5B, 5A & 4B Form (DRC2634, DRC2636), and will take into consideration at a minimum the following information:

- Reason for placement in Level 4 or 5 and relevant circumstances;
- Conduct Reports;
- Current privilege level;
- Time served in current privilege level;
- Total time spent in level 5 and/or level 4;
- Time left to spend on current sentence;
- Time since last incident that resulted in inmate being designated level 5 or 4;
- Program Involvement;
- Behavior in the last five years, including prior to Level 4 or 5 classification;
- Security level prior to placement;
- Adjustment/behavior after placement;
- Factors which indicate a risk of future violence;
- Interaction with others (staff and/or inmates);
- Recognition and acknowledgment of the factors contributing to the commission of the placement offense and nature;
- The findings and recommendations of the previous assessment committees;
- Previous review committees;
- The findings and recommendations of all assessment committees subsequent

to the placement in level 4 or level 5;

- The findings and recommendations of all supervision review committees subsequent to placement in level 4 or level 5;

The committee will use professional correctional judgment to evaluate the inmate's likelihood to repeat prohibited actions. The classification committee shall review the completed Privilege / Security Level Review, Level 5B, 5A & 4B Form and any other relevant information. The committee shall review and evaluate the factors listed above, the circumstances underlying the placement in Level 4 or 5, the reasons for initial placement, the inmate's subsequent actions and his demonstrated attitude. The committee shall determine whether there has been a diminishing of the inmate's risk to the safety of persons or institutional security, within their professional correctional judgment. The committee shall make a recommendation to reduce or continue the inmate's security level accordingly. The committee shall identify the basis for its decision and the factors relied upon. If the committee believes the inmate presents a threat to security of a general population institution, the committee shall document their conclusions as to the inmate's risk and their reasons.

The classification committee shall forward its recommendation to the Warden/Designee. The Warden/Designee shall review the Privilege / Security Level Review, Level 5B, 5A & 4B Form and all other information presented, and approve or disapprove the recommendation. If the warden approves the recommendation, he or she shall submit the recommendation and the approval to the Bureau of Classification for final disposition. The inmate shall be notified of the warden's approval of the recommendation and may file a formal objection to the recommendations of the classification committee and warden with the Bureau of Classification within fifteen

days of the date he is served with the committee's recommendation and warden's action.

The Bureau of Classification will review the recommendation and any objections filed by the inmate, and make a decision.

Security Designation Long Form: Form Nos. DRC2568, DRC2630, DRC2569
Supervision Review Forms: DRC2098, DRC2094, DRC2629, DRC2338
Notice of Hearing Form: DRC2598
Information Presented by the Inmate: DRC2627
Information Presented by Staff: DRC2628).
Classification Committee Report Level 5 Placement, DRC2637, DRC2638, DRC2639
Privilege / Security Level Review, Level 5B, 5A & 4B Form (Form DRC2634, DRC2636)

RECOMMENDED PRIVILEGE LEVELS FOR LEVELS 5 AND 4:

	Level 5B	Level 5A	Level 4B	Level 4A
Clothing	3 State Issue Uniforms	3 State Issue Uniforms	3 State Issue Uniforms	3 State Issue Uniforms
Privilege Level Review	3 Months	6 Months	6 Months	N/A
Classification Status Review	Annually	Annually	Annually	Annually
Phone Calls	One ten minute call per month. All others only by request of Attorney of Record or confirmed serious illness or death in the family	Two ten minute calls per month. All others only by Request of Attorney of Record or confirmed serious illness or death in the family. (Warden's Discretion)	One ten minute call per week. All others only by request of Attorney of Record or confirmed serious illness or death in the family (Warden's Discretion)	2 times per day

	(Warden's Discretion)			
Recreation	5 one-hour periods per week, inside or outside recreation areas.	5 one-hour periods per week; inside or outside recreation areas. Congregate recreation opportunity with at least one other inmate.	5 one-hour periods per week; inside or outside recreation pods. Congregate recreation with at least one other inmate.	Seven 1- ½ hour periods per week
Shaving	3 times per week	3 times per week	5 times per week	Any-time during the day.
Shower	5 times per week	5 times per week	5 times per week	Twice per day.
TV	State Issued or purchase from commissary. Programming only.	State Issued or purchase from commissary Programming and Network.	Network and Institutional programming provided on range TV. Movie rentals on weekends and holidays.	May have personal TV
Walkman	None	Walkman w/ AM/FM w/cassette player. No	Walkman/Cassette AM/ FM w/cassette player.	Commissary Purchase or

		cassettes permitted. Battery operated.	Battery operated. Five (5) cassettes permitted.	Approved vendor
Visits	Non-Contact, 2 visits per month, per visitor for up to 2.5 hours; Attorney of Record, Clergy of Record.	Non-Contact, 2 visits per month, per visitor for up to 3.5 hours, Attorney of Record, Clergy of Record.	Non-Contact, 2 visits per month, per visitor for up to 4 hours, Attorney of Record, Clergy of Record.	Contact, 2 visits per month per visitor for up to 7 hours.
Library/ Legal Service Program-ming	Library: 3 paper-back books Legal: Per kite to Paralegal. Broadcast over TVs provided in each cell Small group program-ming in program booths	Library: 4 paperback books Legal: Per kite to Paralegal. Broadcast over TVs provided in each cell Small group programming in program booths	Library: 5 paperback books Legal: Per kite to paralegal. Broadcast over TVs provided on range. Small group counseling, no more than four inmates.	Minimum 4 1/2 hours per week. Broadcast over TVs; Small group counseling.

Commissary Spending Limit Twice Per Month	$30.00	$50.00	$70.00	$100.

SECURITY DESIGNATION (LONG FORM-PAGE 1)
DEPARTMENT OF REHABILITATION AND CORRECTION
STATE OF OHIO

Number: # _____ - _____
Name: _____
Date of Birth: _____
(month) (day) (year)

Date of Review: _____
(mo) (day) (yr.)

Reviewer: _____
Institution: _____

RACE:	SEX:	HISPANIC:
White ☐	Male ☐	Yes ☐
Black ☐	Female ☐	No ☐
Other ☐		

Mental Health Level: _____ Medical Level: _____
Date of Earliest Possible Parole Hearings/
EDS/Stated Term: _____ Total Number of Felony Incarcerations: _____
Date of Last Prison Release: _____ PSI/OBI Present Yes ☐ No ☐
Committed for DUI: ☐ Technical Violator under Senate Bill 2: ☐ Sex Offender: ☐
Current Crime: _____ Felony Level: _____

	SECTION A	WEIGHT	SCORE
Month/Yr	1. AGE AT CURRENT COMMITMENT		
Date Scoring __	33 years and older	0	
Date Birth __	25 to 32 years older	1	☐
Age ___	24 years and younger	2	
	2. SEVERITY OF CURRENT OFFENSE		
	Low Severity	0	
	Moderate Severity	1	☐
	High Severity	2	
	Greatest Severity	4	
	3. SECURITY LEVEL LAST ADULT PRISON RELEASE		
	No prior prison commitments	0	
	Released from Min. Security/Level 1 or other State	1	
	Released from Med Security Level 2 or Higher	2	
	4. MOST RECENT VIOLENCE INDICATOR (DO NOT include current offense)		

	No violence last 5 years	0	
	Violent conviction last 5 years	1	☐
	Violent conviction as a Juvenile last 5 years	2	
	5. PRE-PRISON GANG MEMBER INDICATOR		
	No	0	☐
	Yes _____	2	
	6. ESCAPE PAST/PRESENT		
	No Escapes	0	
	Non-Perimeter Escape More than 1 Year	1	
	Non-Perimeter Escape within Last Year	2	
	Perimeter/Violent Escape 5 or More Years	3	
	Perimeter/Violent Escape Less than 5 Years	4	
		TOTAL SCORE:	

0-3 POINTS	4-5 POINTS	6-8 POINTS	9-15 POINTS
LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4

DRC 2568 (Rev 01/02

SECURITY DESIGNATION FORM(LONG FORM PAGE 2)
SECTION B OVERRIDES
AND RECOMMENDATIONS

Number: # _____ - _____

Name: _____
(last) (first)

1. Check all the Special Management Concerns which apply to this inmate for purposes of Overriding

Non-Discretionary Override

Conviction for Murder or Agg. Murder*
Prior Escape*
Other: (specify)

_____

*Exclude from Level 1 Custody

Discretionary Override

Prior Adjustment
Time to Earliest Hearing/Stated Term
Violence Threat
Notoriety of Case
Felony Detainer
Time Since Prior Incarceration
Sex Offender
Other: (specify) _____

Discretionary Override For Level 4 when scored on page 1 of this form as level 1, 2 or 3:

☐ Demonstrated physically assaultive and/or predatory behavior resulting in physical harm/injury to any person.

- ☐ Nature of behavior presents a current threat to the security and orderly operation of the institution and safety of others.
- ☐ Planned or participated in a serious disturbance or riot.
- ☐ Possessed major contraband which poses a threat or danger to the institution. Includes but is not limited to: weapons, drugs, escape contraband, large amounts of currency.
- ☐ Identified by the institution Security threat Group Coordinator as an active member involved in disruptive security threat group behavior.
- ☐ Escaped, attempted to escape or committed acts to facilitate an escape from a minimum or medium security facility or while under supervision outside of the facility, resulting in physical harm to others or caused serious destruction to the physical plan.
- ☐ Established an inappropriate relationship with a staff member.
- ☐ Through repetitive and/or seriously disruptive behavior demonstrated an inability to adjust to Level 3 as evidenced by repeated class II rule violations.

Discretionary Override For Level 5 when scored on page 1 of this form as level 1, 2, 3 or 4:

- ☐ Physically assaulted another resulting in serious physical harm.
- ☐ Assaulted or attempted to assault another with a deadly weapon
- ☐ By force or threat of force compelled or attempted to compel another to perform sexual acts; engage in sexual conduct or sexual contact.
- ☐ By force or threat of serious physical harm or death compelled or coerced another to provide anything of value, to perform any act, or to violate any rule.

- ☐ Nature of the inmate's dangerous criminal conduct presents a current threat to the security and orderly operation of the institution and to the safety of others.
- ☐ Lead, organized, or incited a serious disturbance or riot that resulted in the taking of a hostage, significant property damage, physical harm, or loss of life.
- ☐ Conspired or attempted to convey, introduce or possess major contraband which posses a serious threat or danger to the security of the institution. Includes, but not limited to: __Deadly weapons, ammunition, escape instruments and drugs for distributions.
- ☐ Identified by the Institution security Threat Group Coordinator as a leader, enforcer or recruiter of a security threat group, which is actively involved in violent or disruptive behavior.
- ☐ Escaped, attempted to escape or committed acts to facilitate an escape from a level 3, 4 or 5 facility or while under supervision outside the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plan.
- ☐ Has demonstrated an ability to compromise the integrity of staff, which resulted in a threat to the security of the institution.
- ☐ Knowingly engaged in a pattern of behavior, which poses an unreasonable risk of harm to others

DRC2630 (Rev 01/02) Distribution: White–Record Office Canary–Bureau of Classification Pink–Unit File
ACA 4283

SECURITY DESIGNATION FORM (LONG FORM PAGE 3) Number: # _____-_____
SECTION B OVERRIDES AND RECOMMENDATIONS Name: _____
(last) (first)

2. Override of Security Level is Recommended

☐ Yes
☐ No

If yes, give rationale (required): _____

3. Recommended Custody Level and Placement Considerations:

Placement Consideration

☐ Bind-over under age 18
☐ Mental Health needs _____ level
☐ Medical needs _____ level
☐ Separations
☐ Special Education
☐ Required S.O.R.R.C.
☐ MRDD Program
☐ Older Offender
☐ Eligible for IPP

Recommended Security Level (Check one)

☐ Level 1
☐ Level 2
☐ Level 3
☐ Level 4
☐ Level 5

☐ Placement in DUI Camp
☐ Vocational Education needs
☐ Chemical Dependency

Classification Specialist Signature	Date:

SECTION C Bureau of Classification

1. Final Security Level
   ☐ Level 1 ☐ Level 3 ☐ Level 5
   ☐ Level 2 ☐ Level 4
   Rationale: _____
2. Institutional Assignment: _____

Date Assigned Bureau of Classification:	Initials:

DRC2569 (Rev 01/02) Distribution: White–Record Office Canary–Bureau of Classification Pink–Unit File
ACA 4283

SUPERVISION REVIEW – PAGE 1
DEPARTMENT OF REHABILITATION AND CORRECTION
STATE OF OHIO

Number: # _____ - _____
Name: _____
(last)(first)(middle)
Date of Birth: _____
(month)(day)(year)

Date of Review: _____
Reviewer: _____
Institution: _____

RACE: SEX: HISPANIC:
White ☐ Male ☐ Yes ☐
Black ☐ Female ☐ No ☐
Other ☐

Offense: _____

EDS/PBD/EST (Release Date):_____

Present Security Status:

Minimum Level 1 ☐ Medium ☐ High Close ☐ High Maximum ☐

Minimum Level 2 ☐ Close: ☐ Maximum ☐

Date of Last Review: _____

Section IA	UNFAVORABLE BEHAVIOR	WEIGHT	SCORE
1.	FINDING BY RULES INFRACTION BOARD (in the last 12 months)		
	Not Heard by RIB/Found Not Guilty	0	___
	Found Guilty by RIB	2	
2.	ADMINISTRATIVE/LOCAL CONTROL PLACEMENTS (in the last 12 months)		
	None	0	___
	One or More	3	
3.	MOST RECENT VIOLENCE INDICATOR (last 5 years) (Includes pre-prison, current offense, institutional violence)		
	No Violence in Last 60 Months	0	
	Violent Conviction/Infraction Within Past 25-60 Months	1	___
	Violent Conviction/Infraction Within Past 24 Months	2	

4.	FREQUENCY OF GUILTY CLASS II DISCIPLINARY REPORTS (in the last 12 months)		
	None	0	____
	1 – 2	1	
	3 – 5	2	
	6 or More	3	
	SECTION I A SUBTOTAL SCORE (Items 1 - 4)		____

Section I B	STABILITY FACTORS	WEIGHT	SCORE
5.	EDUCATIONAL ATTAINMENT (pre-prison and during incarceration)		
	High School Diploma/GED/Higher Education	-1	____
	Less Than High School Equivalency	0	
6.	INSTITUTIONAL JOB PERFORMANCE (in the last 12 months)		
	No Job Removal/Removed for Other Reasons	-1	____
	Removed for Discipline (Including Non-Job Related Behavior) or Indication of Poor Job Performance	0	

7.	AGE AT THIS REVIEW		
	Age 40 or Older	-1	____
	Age 39 or Younger	0	

SECTION I B SUBTOTAL SCORE (Items 5-7) ____

TOTAL SCORE (Items 1-7) COMBINED SUBTOTALS: ____

(-3- -1 POINTS)	(0 – 4 POINTS)	(5 – 10 POINTS)
Consider Supervision Decrease	Consider Present Supervision	Consider Supervision Increase

Supervision Review – page 2
SECTION II (Overrides and Recommendations)

Number:# _____ - _____
Name: _____
(last) (first)

1. Committee Options:

Offense:_____ E.D.S./P.B.D./E.S.T. (Release Date):_____

Score Indicates Considering Supervision Decrease (-3 - -1)	Score Indicates Considering Present Supervision (0 – 4)	Score Indicates Considering Supervision Increase (5 – 10)
a. Agree: Decrease One Level ☐	a. Agree: Continuation ☐	a. Agree: Increase One Level ☐
b. Disagree: Continue Present Level: ☐	b. Disagree: Decrease One Level ☐ Increase One Level ☐	b. Disagree: Continue Present Level ☐

2. Check (√) all the Special Management Concerns which Apply to this Inmate for Purposes of Overriding Scored Level:

Level 1A Non-Discretionary Overrides

- ☐ Sex Offender
- ☐ Kidnapping or abduction offense
- ☐ High notoriety case inmate

Level 1B Non-Discretionary Overrides

- ☐ Any felony for causing death of a law enforcement officer or another person while incarcerated.
- ☐ Convicted of any capital offense, including former death row inmates.
- ☐ Documented history of escape.
- ☐ Medium security inmate serving indefinite sentence for an F1 or F2 and has not had statutory first parole board hearing.

Discretionary Override For Level 4

Discretionary Overrides

- ☐ Time left to serve
- ☐ Severity of current offense
- ☐ Extensive criminal history
- ☐ Good conduct
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____

- ☐ Demonstrated physically assaultive and/or predatory behavior resulting in physical harm/injury to any person.
- ☐ Nature of behavior presents a current threat to the security and orderly operation of the institution and safety of others.
- ☐ Planned or participated in a serious disturbance or riot.
- ☐ Possessed major contraband which poses a threat or danger to the institution. Includes but is not limited to: weapons, drugs, escape contraband, large amounts of currency.
- ☐ Identified by the institutions Security Threat Group Coordinator as an active member involved in disruptive security threat group behavior.
- ☐ Escaped, attempted to escape or committed acts to facilitate an escape from a minimum/Level 1 or medium/Level 2 security facility or while under supervision outside of the facility, resulting in physical harm to others or caused serious destruction to the physical plant.
- ☐ Established an inappropriate relationship with a staff member.

Through repetitive and/or seriously disruptive behavior demonstrated an inability to adjust to Level 3 as evidenced by repeated class II rule violations.

Supervision Review – page 3
SECTION II (Overrides and Recommendations)

Number: #_____-_____
Name: _____
(Last) (First)

Discretionary Override For Level 5

- ☐ Physically assaulted another resulting in serious physical harm.
- ☐ Assaulted or attempted to assault another with a deadly weapon.
- ☐ By force or threat of force compelled or attempted to compel another to perform sexual acts; engage in sexual conductor sexual contact.
- ☐ By force or threat of serious physical harm or death compelled or coerced another to provide anything of value, to perform any act, or to violate any rule.
- ☐ Nature of the inmate's dangerous criminal conduct presents a current threat to the security and orderly operation of the institution and to the safety of others.
- ☐ Lead, organized, or incited a serious disturbance or riot that resulted in the taking of a hostage, significant property damage, physical harm, or loss of life.
- ☐ Conspired or attempted to convey, introduce or possess major contraband which poses a serious threat or danger to the security of the institution. Includes, but not limited to: Deadly weapons, ammunition, escape instruments and drugs for distribution.
- ☐ Identified by the Institutions Security Threat Group Coordinator as a leader, enforcer or recruiter of a security threat group, which is actively involved in violent or disruptive behavior.

- ☐ Escaped, attempted to escape or committed acts to facilitate an escape from a level 3, 4 or 5 facility or while under supervision outside of the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plant.
- ☐ Has demonstrated an ability to compromise the integrity of staff, which resulted in a threat to the security of the institution.
- ☐ Knowingly engaged in a pattern of behavior, which poses an unreasonable risk of harm to others.
- ☐ Through repetitive and/or seriously disruptive behavior, has demonstrated a chronic inability to adjust to level 4B as evidenced by repeated class II rule violations.

---

3. Override of Review Score is Recommended: ☐ Yes ☐ No

If yes, give rationale (required): _____

_____

_____

---

4. Recommended Placement (check appropriate box)

☐ Level 1A	☐ Level 2	☐ Level 4A	☐ Level 5A
☐ Level 1B	☐ Level 3	☐ Level 4B	☐ Level 5B

Chairperson (Signature):	Date:

5. Warden's Action: Approve: ☐ Disapprove: ☐

6. Warden's Comments: _____

Warden (Signature):	Date:

DRC 2629 (REV 01/02)

Supervision Review – page 4
SECTION II (Overrides and Recommendations)

Number: # _____ - _____

Name: _____
(last) (first)

8. Assignment Requires Transfer: Yes ☐ No ☐

9. Mental Health Needs _____ Level: Yes ☐ No ☐

10. Medical Needs _____ Level: Yes ☐ No ☐

Offense: _____

E.D.S./P.B.D./E.S.T.(Release Date)
_____

11. Date of Next Review (month & year)

SECTION III (Bureau of Classification)

12. Bureau of Classification Action: Approve: ☐ Disapprove: ☐

13. Final Placement (check appropriate box):

☐ Level 1A	☐ Level 2	☐ Level 4A	☐ Level 5A
☐ Level 1B	☐ Level 3	☐ Level 4B	☐ Level 5B

14. Institutional Placement:

15. Bureau of Classification Rationale (required): _____

16.

Date Assigned by Bureau of Classification:	Initials:

DRC 2338 (REV 01/02)

NOTICE OF HEARING

Level 5 Security Placement

Inmate Name:	Number
Lock:	Institution:

You have been referred to the Classification Committee for a hearing to determine whether you should be recommended for Level 5 placement at the Ohio State Penitentiary. The hearing will be held on _____. Pursuant to Ohio Administrative Code §5120-9-53, you will be given the opportunity to speak with at least one member if the committee regarding the proposed placement, to make a statement, and to submit written statements.

You were referred to the Classification Committee for the following reasons(s):

_____

Staff Signature:

A copy of this Notice of Hearing was served upon the above-named inmate on:

Date:	Time:

☐ I wish to waive my right to forty-eight (48) hours between the time I received a copy of this notice and the time I have my hearing.

☐ I wish to waive my right to attend the hearing.

Inmate Signature:	Number:

DRC2598 (Rev 01/02)

Summary Of Inmate's Information
Level 5 Security Placement

Inmate Name:	Number:
Lock:	Institution:

The above-named inmate was referred to the Classification Committee for a hearing to determine whether he should be placed in Level 5 at the Ohio State Penitentiary. Following is a summary of the inmate's information as presented to the committee.

Staff Signature:	Date:

DRC2627 (12/01)

Summary Of Staff's Information
Level 5 Security Placement

Inmate Name:	Number:
Lock:	Institution:

The above-named inmate was referred to the Classification Committee for a hearing to determine whether he should be placed in Level 5 at the Ohio State Penitentiary. Following is a summary of the staff's information as presented to the committee.

Staff Signature:	Date:

DRC2628 (12/01)

CLASSIFICATION COMMITTEE REPORT
Level 5 Security Placement

Inmate Name:	Number:
Lock:	Institution:

The above-named inmate was referred to the Classification Committee for a hearing to determine whether he should be recommended for Level 5 placement at Ohio State Penitentiary. The reasons for the referral are:

_____

_____

_____

_____

The hearing was held on: _____

The committee members were _____

_____

_____

The inmate ☐ was present; ☐ was not present for the following reason(s):

_____

_____

The inmate ☐ submitted; ☐ did not submit a written statement to the committee.

A summary of the information presented by the inmate is attached.
A summary of the information presented by the prison staff is attached.

The Classification Committee ☐ recommends; ☐ does not recommend that this inmate be classified as Level 5 and transferred to the Ohio State Penitentiary. (If Level 5 is recommended, the following two sections must be completed.)

Demonstrated Behavior:
This inmate's behavior meets the criteria of the DRC Policy 111-07 (identify which criteria is applicable):

☐ 1. The inmate has demonstrated physically or sexually assaultive and/or predatory behavior resulting in serious physical injury or death, or an attempt to sexually assault any person, or to cause serious physical injury or death to any person.

☐ 2. The nature of the inmate's dangerous criminal conduct presents a current threat to the security and orderly operation of the institution and the safety of others.

☐ 3. The inmate has lead, organized, or incited a serious disturbance or riot that resulted in the taking of a hostage, significant property damage, physical harm, or loss of life.

DRC 2637 (Rev 01/02)

Classification Committee Report Inmate Last Name:
Level 5 Security Placement, Page 2 Number:

Demonstrated Behavior Continued:

☐ 4. The inmate has conspired or attempted to convey, introduce or possess major contraband which poses a serious threat or danger to the security of the institution.

☐ 5. The inmate has been identified a leader, enforcer, or recruiter of a security threat group, which is actively involved in violent or disruptive behavior

☐ 6. The inmate escaped, attempted to escape or committed acts to facilitate an escape from a Level 3 or 4 security facility or while under supervision outside of the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plant.

☐ 7. The inmate has demonstrated an ability to compromise the integrity of staff, which resulted in a threat to the security of the institution.

☐ 8. The inmate knowingly engaged in a pattern of behavior, which poses an unreasonable risk of harm to others.

☐ 9. The inmate through repetitive and/or seriously disruptive behavior, has demonstrated a chronic inability to adjust to Level 4B as evidenced by repeated class II rule violations.
Act(s) committed by the inmate which meets the criteria:

_____

_____

Nature of the Threat Presented:

Describe the nature of the threat the inmate presents and the committee's reasons for the recommendation:

_____

Committee Member:	Committee Member:
Committee Member:	Date:

Warden's Action: ☐ Approve ☐ Disapprove

Warden's Comments: _____

_____

_____

Warden:	Date:

DISTRIBUTION: WHITE – Records CANARY – Unit File
PINK – Inmate GOLDENROD – Regional Director (when appropriate)
DRC 2638 (Rev. 01/02) ACA 4282, 4288, 4289

Classification Committee Report Inmate Last Name:
Level 5 Security Placement, Page 3 Number:

A copy of the committee's recommendation and warden's action was served upon the above-named inmate on:

Date:	Time:	Staff Signature:

If the Warden approves the recommendation, he or she shall submit the recommendation and the approval to the Bureau of Classification for final disposition. The inmate shall be notified of the warden's approval of the recommendation and may file a form objection to the recommendations of the classification committee and warden with the Bureau of Classification within fifteen days of the date he is served with the committee's recommendation and warden's action.

Chief, Bureau of Classification Action:
☐ Approve ☐ Disapprove

Chief, Bureau of Classification Comments:

_____

_____

Chief:	Date:

DISTRIBUTION: WHITE - Records CANARY – Unit File PINK – Inmate GOLDENROD – Regional Director (when appropriate)
DRC 2639 (Rev 01/02) ACA 4282, 4288, 4289

Privilege/Security Level Review
(5B, 5A, 4B) ☐ Annual Supervision Review

Name:	Number:	Institution:	Lock:	Date:

Current Privilege Level:	Date Placed in Current Privilege Level:	Date of Last Review:

Time To Earliest Possible Release:
☐EDS ☐PRD ☐POA ☐FHD ☐Other _____
☐More than Ten Years ☐Six To Ten Years
☐Three To Five Years ☐Less Than Two Years

Original Placement Offense:

_____

Basis for Admission to Level 5 Or Level 4	Current Conduct Behavior Level 5 Or Level 4
☐1. STG or more than one incident of violence toward staff. ☐ 2. Single incident of violence toward staff. ☐ 3. More than one incident of violence toward inmate(s). ☐4. Single incident of violence toward an inmate ☐ 5. More than one non-violent major contraband incident. ☐6. Single non-violent major contraband incident. ☐7. Other:	☐1. Poor – Continues to receive Class II Conduct Reports on a periodic basis. ☐2. Average – Occasional Class II, but no aggressive/ assaultive behavior. ☐ 3. Good – Occasional Class III Conduct Reports, but no Class II conduct Reports. ☐ 4. Excellent – No incidents or Conduct Reports.

Time since Last Incident That Resulted In Designation As Level 5 or Level 4:

☐Past Year ☐One-Three Years ☐Four-Five Years
☐More than 5 Years Ago

	Post Placement	After the Last Review
Class II Conduct Reports:		
Class III Conduct Reports:		

Program Involvement:

☐ No Participation in Programs Required by Program Plan.
☐ Enrolled but had Not Completed Programs.
☐ Participated and Completed Programs Required by Program Plan

1. Unit: _____

_____

2. Education: _____

_____

3. Recovery Services: _____

_____

4. Mental Health: _____

_____

5. Other: _____

_____

DRC2634 (01/02) DISTRIBUTION: WHITE – Records

CANARY – Unit File PINK –Inmate GOLDENROD – Regional Director (when appropriate)

ACA 4282, 4284, 4288

Privilege/Security Level Review- page 2
(5B, 5A, 4B)

Inmate Name:
Number:

Interaction With Others:
1. Staff: ☐Good ☐Average ☐Poor
Comments: _____

2. Inmates: ☐Good ☐Average ☐Poor
Comments: _____

Inmate Comments At Review Hearing: _____

_____

Staff Comments At Review Hearing: _____

_____

Committee Recommendation:

Retain At Current Level:	☐	☐	☐
Decrease One Level:	☐	☐	☐
Increase One Level:	☐	☐	☐
Recommend Security Review:	☐	☐	☐

Staff Signatures: _____

Warden/Designee's Signature/Action:
☐Approve ☐Deny Warden/Designee's Signature:
Annual Supervision Reviews ONLY:
☐Approve ☐ ☐Deny Director's Designee:

DRC2636 (01/02)

STATE OF OHIO

(seal)

DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Parole Board Hearing Policy	Page 1 of 20
	SECTION: 111- NUMBER: 07
RULE/CODE REFERENCE:	SUPERCEDES: 111-07 dated 3/1/02
RELATED ACA STANDARDS:	EFFECTIVE DATE: May 22, 2002
RELATED AUDIT STANDARDS:	APPROVED: /s/Reginald A. Wilkinson

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the director of the Department of Rehabilitation and Correction authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to define the classification procedures for placing inmates in Level 4 and Level 5 security classifications.

III. APPLICABILITY

This policy applies to all staff and inmates involved in the classification process, except inmates who are classified as death row status and held at Mansfield Correctional Institution.

IV. DEFINITIONS

Classification Level 4 - A security level for inmates who are involving in, but not leading others to commit violent, disruptive, predatory or riotous actions, and/or a threat to the security of the institution as set forth in the established Level 4 criteria. This classification replaces the classification previously known as "high maximum security." References to maximum security in the Administrative Code and other policies shall be construed as the equivalent of "level 4."

Classification Level 5—A security level for inmates who commit or lead others to commit violent, disruptive, predatory, riotous actions, or who otherwise pose a serious threat to the security of the institution as set forth in the established Level 5 criteria. This classification replaces the classification previously known as "high maximum security." References to" high maximum security" in the Administrative Code and other policies shall be construed as the equivalent of "level 5."

Privilege Level B—The initial privilege level assigned to an inmate classified into Levels 4 or 5.

Privilege Level A—A less restrictive privilege level, which inmates may be placed into by the Privilege Level Review Committee, after a review of the inmate's status in Levels 4 or 5.

Seriously Mentally Ill—Serious mental illness means a substantial disorder of thought or mood which significantly impairs judgement, behavior, capacity to recognize reality or cope with the ordinary demands of life within the prison environment and is manifested by substantial pain or disability. Serious mental illness requires a mental health diagnosis, prognosis and treatment, as appropriate, by mental health staff. For purposes of this policy only, "seriously mentally ill" shall also include persons whose condition meets the criteria of the department's standard operating procedure for exclusion from OSP.

V. POLICY:

It is the policy and objective of the classification level system to Create a process for the classification of inmates according to their security risk. This process shall consider behavior and such other objective factors as are available and relevant when assessing an inmate's institutional security needs. Inmates shall be placed at the lowest level of security possible that is still sufficient to ensure the safety and security of persons, the institution and the community. Inmates shall be placed at institutions that are consistent with their security classification rating. No level 5 inmate will be housed at the Ohio State Penitentiary who is determined to be seriously mentally ill, pursuant to the procedures of the departments bureau of mental health; or whose medical needs are inconsistent with that assignment, pursuant to Policy Directive 320-1 5, "Medical Classification."

VI. PROCEDURES

A. Placement in Level 4 or 5 from Reception

Inmates may be placed at Level 4 from Reception, based upon the results of the scoring of the Security Designation Form. The Reception Coordinator and the Warden/Designee must recommend the placement, and the Bureau of Classification must approve it. The Reception Coordinator shall use the Security Designation Long Forms or Initial Designation Forms for females, referenced at the end of this directive.

If an inmate is recommended for Level 5 placement at reception, the inmate shall receive a notice, a hearing and a written decision as with other level 5 placements, described further in paragraph C., below.

B. Placement in Level 4 after Initial Institutional Assignment:

The Warden, Deputy Warden, Major, Unit Management Administrator (UMA), Unit Manager, Rules Infraction Board (RIB), or Reception Coordinator may initiate placement into the Level 4 Classifications. If the Department has already made an initial assignment following reception, the person initiating the placement shall use the Supervision Review Forms, referenced at the end of this directive. Once initiated, the Warden Designee shall establish a classification committee pursuant to rule 5120-9-53 of the Administrative Code to review the inmate's behavior and determine if the inmate meets one or more of the following Level 4 criteria:

1. The inmate has demonstrated physically assaultive and/or predatory behavior resulting in physical harm/injury to any person.

2. The nature of the inmate's behavior presents a current threat to the security and orderly operation of the institution and safety of others.
3. The inmate has planned or participated in a serious disturbance or riot.
4 The inmate has possessed major contraband which poses a threat or danger to the institution. This includes but is not limited to: weapons, drugs, escape contraband, large amounts of currency.
5. The inmate functions as an active member involved in disruptive security threat group behavior.
6. The inmate escaped, attempted to escape or committed acts to facilitate an escape from a level 1 or 2 (or their equivalent, minimum or medium) security facility or while under supervision outside of the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plant.
7. The inmate has established an inappropriate relationship with a staff member.
8. The inmate through repetitive and/or seriously disruptive behavior has demonstrated an inability to adjust to Level 3 as evidenced by repeated class II rule violations.

The classification committee shall review the completed Supervision Review Form and any relevant information. The inmate is to be served with a Notice of Hearing Form (DRC 2663 & 2664) 48 hours prior to the hearing, and afforded the opportunity to appear before the entire committee, unless waived in writing, to offer any pertinent information, explanation and/or objections to Level 4 placement. The inmate will also be afforded the opportunity to submit a written statement to the committee. The classification committee shall determine whether the inmate has met one of the criteria above and whether the inmate should be placed in

level 4. The classification committee shall make a recommendation accordingly.

The Classification committee shall forward its recommendation to the Warden/Designee. The Warden/Designee shall review the Supervision Review Form and all other information presented, and approve or disapprove the recommendation. If the warden approves the recommendation for level 4, he or she shall submit the recommendation to the Bureau of Classification for final disposition. The inmate may file a formal objection to the recommendation of the classification committee and warden with the Bureau of Classification within fifteen days. The Bureau of Classification will review the recommendation and any objections filed by the inmate, and make a final decision.

C. Placement in Level 5 after Initial Institutional Assignment

I. Reasons for Placement at Level 5 Security Classification.

An inmate may be placed at Level 5 Security Classification for either of the following administrative reasons:

A. The Rules Infraction Board (RIB) has found the inmate guilty of violating an institutional rule. As a result of the finding of guilt, the RIB has imposed confinement in disciplinary control as punishment for the offense. As a further result of the finding of guilt, the RIB has referred the inmate to the classification committee. The classification committee shall determine that the offensive behavior constitutes a threat to the safety and security of the institution and that such behavior meets one of the substantive criteria for placement at Level 5 Security Classification.

B. The inmate is guilty of a criminal offense and has been sentenced and committed to the custody of the Department of Rehabilitation and Corrections. The Department's reception coordinator or the warden of an institution may refer the inmate to the classification committee for a determination as to whether the offensive behavior constitutes a threat to the safety and security of the institution. The classification committee has determined that such behavior meets substantive criterion (2) for placement at Level 5 Security Classification.

II. Substantive Criteria Governing Placement at Level 5 Security Classification

A. Placement into the Level 5 classification may be initiated by the Warden, Deputy Warden, Major, UMA, Unit Manager, RIB or the Reception Coordinator. The person initiating the placement shall use the Security Designation Long Form, referenced at the end of this directive.

B. Once initiated, the Warden/Designee shall establish a classification committee to review the inmate's behavior and determine if the inmate meets one or more of the following Level 5 criteria:

1. The inmate has demonstrated physically or sexually assaultive and/or predatory behavior resulting in either serious physical injury or death to any person, or in an attempt to sexually assault any person, or to cause serious physical injury or death to any person. An inmate has demonstrated such behavior when the inmate has:

a. Physically assaulted another resulting in serious physical harm;

b. Assaulted or attempted to assault another with a deadly weapon
c. Compelled or attempted to compel another to perform sexual acts, engage in sexual conduct or sexual contact; or to submit to sexual contact; all by force or threat of force;
d. Compelled or coerced another, by force or the threat of serious physical harm or death, to provide anything of value, to perform any act, or to violate any rule.

2. The nature of the criminal offense committed prior to incarceration constitutes a current threat to the security and orderly operation of the institution and to the safety of others, for example, serious assaults against law enforcement, participation in organized criminal activity or actions indicating a serious escape risk.

3. The inmate has lead, organized, or incited a serious disturbance or riot that resulted in the taking of a hostage, significant property damage, physical harm, or loss of life.

4. The inmate has conspired or attempted to convey, introduce or possess major contraband which poses a serious threat or danger to the security of the institution. This includes but is not limited to:

a. Deadly weapons. 'Deadly weapon means any instrument, device, or thing capable of inflicting death, and designated or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.
b. Ammunition. "Ammunition" means any thing hurled by a weapon or exploded as a weapon, as bullets, gunpowder, shots, shells, bombs, grenades, rockets, etc.

c. Escape instruments. "Escape instruments" include any substance, device, instrument, or article designed or specially adapted for criminal use in an escape attempt; or possession or control of any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use in an escape attempt.
d. Drugs of less than bulk amount, as defined by Ohio Revised Code, when possessed on multiple occasions.
e. Drugs for distribution. "Drugs for distribution" means any drug possessed in such amount as to subject an inmate to incarceration for at least a third degree felony as defined by the Ohio Revised Code.

5. The inmate functions as a leader, enforcer, or recruiter of a security threat group, which is actively involved in violent or disruptive behavior.

6. The inmate escaped, attempted to escape or committed acts to facilitate an escape from a level three or four (or their equivalent, close or maximum) security facility or while under supervision outside of the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plant.

7. The inmate has demonstrated an ability to compromise the integrity of staff, which resulted in a threat to the security of the institution.

8. The inmate knowingly exposed others to the risk of contracting a dangerous disease, such as HIV or hepatitis.

9. The inmate through repetitive and/or seriously disruptive behavior, has demonstrated a chronic inability to adjust to level 4B as evidenced by repeated class II rule violations.

III. Procedural Requirements Governing Placement at Level 5 Security Classification.

A. Notice.

The inmate shall be served with Advance Written Notice (Form DRC2598, 2652, &2661) of the hearing at least forty-eight (48) hours prior to the commencement of the hearing. The notice shall include all of the reasons for the proposed placement and a summary of the evidence relied on. If the classification committee intends to use the statement of a witness whose identity it intends to withhold, the written notice shall indicate the classification committee's reliance on such statement and disclose as much of the substance of the information without jeopardizing the safety of persons or institutional security.

B. Hearing.

1. The classification committee shall make an audio recording of placement hearings.

The institution shall retain this record while the inmate is at Level 5 security status.

2. The inmate shall be afforded the opportunity to appear before the classification committee and make an oral or written statement if the inmate so desires. The inmate has a right to call witnesses and present documentary evidence as long as permitting him to do so will not be unduly hazardous or burdensome to institutional safety or correctional goals. If the inmate requests testimony of a witness who would otherwise be approved, and the witness in incarcerated at another facility, the witness shall be permitted to testify by telephone.

3. The inmate does not have a right of confrontation and cross-examination of witnesses, nor does the inmate have a right to counsel.

4. If the classification committee intends to use the statement of a witness whose identity it wishes to withhold, the classification committee shall inform the inmate of such reliance and disclose as much of the substance of the information without jeopardizing the safety of persons or institutional security. Before utilizing such information, the classification committee shall provide the inmate with a reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

5. If the classification committee intends to rely on a statement that previously was not made known to the inmate, the classification committee shall disclose the substance of such information to the inmate. Before utilizing such information, the classification committee shall provide the inmate with a reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

6. At the conclusion of the hearing, the classification committee shall inform the inmate orally of its recommendation. The classification committee shall prepare a contemporaneous written statement, which shall include its recommendation, the reasons for the recommendation and the evidence relied on. The classification committee shall provide the inmate with a copy of its recommendation (Forms DRC2637, 2638, & 2639).

7. The classification committee shall inform the inmate of his right to appeal and the method for the appeal (Form DRC2596).

C. Administrative Appeals

1. No person who serves on a prisoner's classification committee should decide, or take part in deciding, the prisoner's appeal to the Warden or the Bureau of Classification.

2. The inmate shall submit any written appeal to the warden or warden's designee ("warden/designee') within fifteen days following the classification committee's recommendation. After the warden/designee receives the classification committee's recommendation, the warden/designee shall independently review the recommendation for consistency with the standards of this policy.

3. If the warden/designee intends to rely on a statement that previously was not made known to the inmate, the warden/designee shall disclose the substance of such information to the inmate. Before utilizing such information, the warden/designee shall provide the inmate with a reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

4. If the warden/designee intends to use the statement of a witness whose identity he or she wishes to withhold, the warden/designee shall inform the inmate of such reliance and disclose as much of the substance of the information without jeopardizing the safety of persons or institutional security. Before utilizing such information, the warden/designee shall provide the inmate with a

reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

5. The warden/designee shall prepare a written statement, which shall include his or her recommendation, the reasons for the recommendation and the evidence relied on. The warden/designee shall provide the inmate with a copy of his or her recommendation (Form DRC2653 & 2657).

6. The warden/designee shall inform the inmate of his right to appeal and the method for the appeal (Form DRC2596).

7. The inmate must submit any written appeal which may include argument and documentary evidence within fifteen (15) days following the warden's recommendation.

8. After the Bureau of Classification receives the warden's recommendation and the classification committee's recommendation, the Bureau of Classification shall consider those recommendations and, determine whether the inmate should be placed at Level 5.

9. If the Bureau of Classification intends to rely on a statement that previously was not made known to the inmate, the Bureau of Classification shall disclose the substance of such information to the inmate. Before utilizing such information, the Bureau shall provide the inmate with a reasonable Opportunity to respond with a written statement and/or the submission of documentary evidence.

10. If the Bureau of Classification intends to use the statement of a witness whose identity it wishes to withhold, the Bureau of Classification shall inform the inmate of such reliance and disclose as much of the substance of the information without jeopardizing the safety of persons or institutional security. Before utilizing such information, the Bureau of Classification shall provide the inmate with a reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

11. The Chief of the Bureau of Classification shall prepare a written statement, which shall include its decision, the reasons for the decision and the evidence relied on (Form DRC2654 & 2655). The Bureau of Classification shall send a copy of the decision to the inmate within ten (10) working days following receipt of the inmate's appeal.

D. Placement in Level 5 from Level 4

A classification Committee shall review the inmate's behavior and determine if the inmate meets at least one of the criteria for Level 5.

If the inmate's repetitive and/or seriously disruptive behavior has demonstrated a chronic inability to adjust to level 4B, the documentation must clearly reflect this. The classification committee must ensure that the documentation includes any repeated class II rule violations, information and/or descriptions of the inmate's behavior and how the behavior disrupted the operation of the housing unit, facility or its operation. For example:

- List any rule violations with dispositions and the dates of any violations within the previous twelve months.

- Detail the number of times it was necessary to use force to restrain or control the inmate.
- List the instances of disruptions to meal, recreation, shower or scheduled activities, etc.
- Detail the impact on other inmates, threats, disruptions, etc.

The classification committee shall complete the process as described in subsection C., above.

E. 30 Day Review/Orientation Process

Placement into Level 4 or Level 5 varies in length depending on the nature of the initiating incident, criteria for placement, and/or demonstrated behavior in assigned level. All inmates placed into these levels shall have a review of their classification level completed by an assigned Unit staff member within 30 days of placement to determine if they have been properly classified. This review shall include a review of the inmate's file to ensure that proper documentation has been included detailing how/why the inmate has been classified into Level 4 or Level 5.

If the review finds that the inmate meets the appropriate criteria, Unit and/or programming staff will meet with the inmate to explain the classification and review processes and what the expectations are concerning his behavior, and appropriate program participation. This meeting will also afford the inmate the opportunity to request any needed assistance while assigned in the classification level. Staff will advise the inmate whether release to a general population institution in three years or less appears reasonably possible. Staff may recommend to the warden that the inmate be immediately placed in privilege level A. The warden shall make the final decision on such a privilege recommendation.

If the review finds that the inmate does not meet the Level 4 or Level 5 criteria, the reviewing staff member shall forward a written recommendation through the Deputy Warden of Operations, to the Warden recommending that the inmate be transferred to an appropriate institution. The reasons for the recommendaion must be listed to reflect why the inmate is not appropriate for Level 4 or Level 5 and is more appropriate for another level.

If the Warden concurs with the recommendation, the packet will then be forwarded, along with a newly completed Supervision Review Form, to the Bureau of Classification for appropriate action. If the Warden disagrees with the committee's recommendation, the inmate remains at his current status and this decision is not appeallable.

F. Privilege Level Review Process

Inmates placed into Level 4 or 5 will initially be assigned to privilege level B (5B or 4B). They will remain in this level until recommended for reduction by the Privilege Level Review Committee, and approved by the Warden/Designee. Reductions from Privilege Level B to A do not require the Bureau of Classification's approval. However, a Privilege Level Review, Level 5B, 5A & 4B Form (Form DRC2634, 2636, 2642, & 2643) must be completed, approved at the institution and entered into the DOTS system when a privilege level changes.

The privilege level review process not to be confused with a Supervision Review weighs both known behavior and future risk levels. The information reviewed during the assessment will include, but is not limited to:

- Program Involvement
- Current privilege level

- Time served in current privilege level
- Total time spent in level 5 and/or level 4
- Time left to Spend on Current sentence
- Time since last incident that resulted in inmate being designated level 5 or 4
- Conduct Reports
- Reason for placement
- Behavior in the last five years -- Prior to Level 4 or 5 classification
- Security level when placed
- Adjustment/behavior after placement
- Interaction with others (staff and/or inmates)
- The offender recognizes and acknowledges factors contributing to the commission of the placement offense and nature
- Other Factors which indicate a risk of future violence

The committee will use professional correctional judgment to evaluate the inmate's likelihood to repeat prohibited actions. The privilege level review will be in a narrative form to record the factors considered by the evaluating employee. The inmate will appear before the Privilege Level Review Committee to ensure that he or she has the opportunity to have input into the process and respond to questions the committee may have during the review. The Privilege Level Review Committee will consist of a Unit staff member, a Custody staff member, and a Warden's designee. They may consult with any other staff person (Mental Health, Medical, Executive Staff, etc.) during the course of the review process.

G. Privilege Level Review for Level 4

Inmates placed in level 4 shall receive privilege level reviews during the time between annual supervision reviews and at the time of the annual review. The annual supervision review procedures are more fully described below. The provisions of

this section pertain only to privilege levels within the assigned security level.

Privilege level 4B is an entry level privilege status. Placement in 4B is for an indeterminate period. Inmates classified into Level 4B shall have an assessment completed every six months. Inmates who are in privilege level 4B and have been reviewed pursuant to this subsection may be placed in privilege level 4A.

The inmate will appear before the committee to discuss and review the placement issues. The inmate shall have the opportunity to present information, express objections and explain the current classification. The committee will advise the inmate of their expectations and any steps the inmate can take to improve his or her eligibility for reduction. The first assessment will take place six months after the initial placement, and will continue every six months thereafter.

The Privilege Level Review Committee will make a recommendation to the warden/designee to either continue the inmate in 4B reduce the inmate to 4A, or increase the inmate from 4A to 4B, which must be supported by a written rationale. The warden/designee shall then render a decision based on the Committee's recommendation. This decision is not appeallable. The Privilege Level Review Committee may also recommend a special supervision level review if that is warranted, in their judgment. Such special reviews must be approved by an individual who could initiate such a placement and shall follow the procedures described for an annual supervision review, described below.

H. Privilege Level Review for Level 5

Inmates placed in level 5 shall receive privilege level reviews during the time between annual supervision reviews and at

the time of the annual review. The annual supervision procedures are more fully described below. The provisions of this section pertain only to privilege levels within the assigned security level.

Inmates classified into Level 5B shall have an assessment completed every three months; inmates classified as Level 5A shall have an assessment completed every six months.

Placement in Level 5 is for an indeterminate period. Privilege level 5B is an entry level privilege status. Inmates who are in privilege level SB and have been reviewed pursuant to this subsection may be placed in privilege level 5A.

The Privilege Level Review Committee will consist of three members, designated by the warden/designee, such as the inmate's Unit Manager, Case Manager (to comment on educational programming, and other programming), Mental Health staff, and/or a custody staff person.

The inmate will appear before the committee to discuss and review the placement issues. The inmate shall have the opportunity to present information, express objections and explain the current classification. The committee will advise the inmate of their expectations and any steps the inmate can take to improve his or her eligibility for reduction. The first review for 5A inmates will take place six months after the initial placement, and will continue every six months thereafter. The first review for 5B inmates will take place three months after the initial placement, and will continue every three months thereafter.

At the annual (one-year) review a Security Level Review, Level 5 Form (Form DRC2647 & 2648) will be completed regardless of the recommendation affording the inmate the normal classification review and appeals process.

The Review Committee will make a recommendation to the Warden/Designee to either continue the inmate in 5B, reduce him to 5A or increase the inmate from 5A to 5B, which must be supported by a written rationale. The warden/designee shall then render a final decision based on the Committee's recommendation. This decision is not appeallable. The Privilege Level Review Committee may also recommend a special supervision level review if that is warranted, in their judgment. Such special reviews must be approved by an individual who could initiate such a placement and shall follow the procedures described for an annual supervision review, described below.

I. Reasons for Reduction from Level 5 Security Classification

I. An inmate shall be reduced from Level 5 security classification when there are no longer sufficient security concerns justifying retention at that level.

II. The following factors shall be considered in the evaluation of an inmate's readiness for reduction from Level 5 security classification:

A. Reason for placement in Level 4 or 5 and relevant circumstances;
B. Conduct Reports;
C. Current Privilege level:
D. Time Served in current privilege level;
E. Total time spent in level 5 and/or level 4;
F. Time left to spend on current sentence;
G. Time since last incident that resulted in inmate being designated level 5 or 4;
H. Program Involvement;
I. Behavior in the last five years, including prior to Level 4 or 5 classification;
J. Security level prior to placement;
K. Adjustment/behavior after placement;
L. Factors which indicate a risk of future violence;
M. Interaction with others (staff and/or inmates);
N. Recognition and acknowledgment of the factors contributing to the commission of the placement offense and nature;
O. The findings and recommendations of the previous assessment committees;
P. Previous review committees;
Q. The findings and recommendations of all assessment committees subsequent to the placement in level 4 or level 5; and

R. The findings and recommendations of all supervision and privilege review committees subsequent to placement in level 4 or level 5.

III. The following guidelines shall be adhered to in the evaluation of an inmate's readiness for reduction from Level 5 security classification:

A. Unless an inmate's prior conduct during incarceration resulted in death or extreme bodily harm of another, the evaluation should only consider behavior in the last five years, including prior to Level 4 or 5 classification.

B. A prisoner's prior conduct that results in the death or extreme bodily harm to another may only be considered for retaining a prisoner in Level 5 classification if that conduct was used as one of the justifications for the prisoner's initial placement to Level 5. In such a case, the prisoner's prior conduct that resulted in the death or extreme bodily harm of another may be considered but the conduct must be considered in conjunction with his conduct while at the OSP.

C. Unless an inmate's prior conduct during incarceration resulted in death, or extremely serious bodily harm of another, the inmate should generally qualify for reclassification to a lower security classification if he has not committed any violent act in the previous three years and has not been involved in any major misconduct in the previous two years while confined at the OSP.

IV. At least twice a year, the classification committee shall notify each Level 5 inmate in writing and orally of the inmate's progress toward security level reduction. Such notification shall take place as a part of the regularly conducted privilege or security level reviews. Such notice

shall advise the inmate of any specific conduct necessary for that prisoner to be reduced from Level 5 as well as the amount of time it will take before the inmate's security level is likely to be reduced.

J. Procedures for Annual Supervision Level Review

All Level 4 and Level 5 inmates shall have supervision reviews completed at least annually. The classification committee shall have three members, consisting of the Deputy Warden of Operations/Designee, the Unit Management Administrator, a Unit Manager, a Case Manager and/or other Unit Staff member and may include a Mental Health staff person. All annual reviews must include a Director's designee to review all pertinent information and make a recommendation. This committee shall review the partially completed Security Level Review, Level 5 Form (Form DRC 2647 & 2648). A copy of this document, as explained in the next paragraph, is to be attached to the notice of the hearing.

II. Notice of Hearing. The inmate shall be served with advance written notice (Form DRC 2646) of the hearing at least forty-eight (48) hours prior to the commencement of the hearing. The notice shall include the date and time of the hearing. Attached to the notice will be a copy of the classification committee's report which was completed at the time of placement; and a copy of the Security Level Review Form containing all pre-hearing information. Those documents provide the inmate with a summary of the evidence which the classification committee will consider in determining whether to retain or reduce the inmate's Level 5 security classification.

I. Hearing.

A. The classification committee shall make an audio recording of the retention hearing. The institution shall retain this record while the inmate is at Level 5 security status.

B. The inmate shall be afforded the opportunity to appear before the classification committee and make an oral or written statement if the inmate so desires. The inmate has a right to call witnesses and present documentary evidence as long as permitting him to do so will not be unduly hazardous or burdensome to institutional safety or correctional goals. If the inmate requests testimony of a witness who would otherwise be approved, and the witness in incarcerated at another facility, the witness shall be permitted to testify by telephone.

C. The inmate does not have a right of confrontation and cross-examination of witnesses, nor does the inmate have a right to counsel.

D. If the classification committee intends to use the statement of a witness whose identity it wishes to withhold, the classification committee shall inform the inmate of such reliance and disclose as much of the substance of the information without jeopardizing the safety of persons and institutional security. Before utilizing such information, the warden shall provide the inmate with a reasonable Opportunity to respond with a written statement and/or the submission of documentary evidence.

E. If the classification committee intends to rely on a statement that previously was not made known to the inmate, the committee shall disclose the substance of such information to the inmate. Before utilizing such information, the committee shall provide the inmate with a reasonable opportunity to respond with a written

statement and/or the submission of documentary evidence.

F. At the conclusion of the hearing, the classification committee shall inform the inmate orally of its recommendation. The classification committee shall prepare a contemporaneous written statement, which shall include its recommendation, the reasons for the recommendation and the evidence relied on (Form DRC 2660). The classification committee shall provide the inmate with a copy of this form.

G. The classification committee shall inform the inmate of his right to appeal and the method for the appeal.

II. Administrative Appeals.

A. No person who serves on a prisoner's classification committee should decide, or take part in deciding, the prisoner's appeal to the Warden or the Bureau of Classification.

B. The inmate shall submit any written appeal to the warden or warden's designee (warden/designee") within fifteen days following the classification committee's recommendation. After the warden or the warden/designee receives the classification committee's recommendation, the warden/designee shall review the recommendation for consistency with the standards of this policy.

C. If the warden intends to rely on a statement that previously was not made known to the inmate, the warden shall disclose the substance of such information to the inmate. Before utilizing such information, the warden shall provide the inmate with a reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

D. If the warden intends to use the statement of a witness whose identity he or she wishes to withhold, the warden shall inform the inmate of such reliance and disclose as

much of the substance of the information without jeopardizing the safety of persons or institutional security. Before utilizing such information, the warden shall provide the inmate with a reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

E. The warden/designee shall prepare a written statement, which shall include his or her recommendation, the reasons for the recommendation and the evidence relied on (Form DRC 2650). The Warden shall provide the inmate with a copy of his/her recommendation.

F. The warden shall apprise the inmate of his right to appeal and the method for the appeal.

G. The inmate shall submit any written appeal, which may include argument and documentary evidence, within fifteen (15) days following the warden's recommendation.

H. After the Bureau of Classification receives the warden's recommendation and the classification committee's recommendation, the Bureau of Classification shall consider those recommendations and, determine whether the inmate should be retained at Level 5.

I. If the Bureau of Classification intends to rely on a statement that previously was not made known to the inmate, the Bureau of Classification shall disclose the substance of such information to the inmate. Before utilizing such information, the Bureau shall provide the inmate with a reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

J. If the classification committee intends to use the statement of a witness whose identity it wishes to withhold, the classification committee shall inform the inmate of such reliance and disclose as much of the substance of the information without jeopardizing the safety of persons or institutional security. Before

utilizing such information, the classification committee shall provide the inmate with a reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

K. The chief of the bureau shall prepare a written statement, which shall include his or her decision, the reasons for the decision and the evidence relied on (Form DRC 2656). The Bureau of Classification shall send a copy of the decision to the inmate within ten (10) working days following receipt of the inmate's appeal.

L. Optional Procedure for Placement and Retention in Level 5

The Department, its employees and its administrators may utilize an optional procedure when placing an inmate in level 5 or considering whether an inmate should be retained in level 5. This procedure ~hall be optional at the discretion of the staff and officials of the department. This procedure may be utilized to replace any step or all Steps in the processes described above for placement and retention at level 5.

The staff and officials may conduct any hearing, consideration or proceeding using videoconference communications. The inmate; the case manager, unit management administrator ("O.K.") or other institution representative; and the chief of the bureau of classification or designee, at a minimum, shall participate in the videoconference hearing. The case manager, O.K. or other institution representative shall provide information about the inmate's adjustment, program participation and other information relevant to the decision. The warden or a designee may also participate to present information or opinions, as may any other person who may offer information that is relevant to the issue being considered.

The institution representatives shall present information concerning the items for consideration by a classification committee conducting an annual supervision level review, as identified in the subsection above. The chief of the bureau of classification may obtain any additional information as will likely be reasonably relevant to the decision, and is encouraged to obtain it in advance of the proceeding to assist in the efficient consideration of the matter. The chief of the bureau may continue the hearing at any time to allow the collection of additional information or to assist with the deliberative process.

The inmate shall be permitted a reasonable opportunity to present information and statements regarding the issue at hand. The department may videotape the proceeding for its subsequent use, but taping is not mandatory.

If the Bureau of Classification intends to use the statement of a witness whose identity it wishes to withhold, the Bureau of Classification shall inform the inmate of such reliance and disclose as much of the substance of the information without jeopardizing the safety of persons or institutional security. Before utilizing such information, the Bureau of Classification shall provide the inmate with a reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

If the Bureau of Classification intends to rely on a statement that previously was not made known to the inmate, the Bureau of Classification shall disclose the substance of such information to the inmate. Before utilizing such information, the Bureau shall provide the inmate with a reasonable opportunity to respond with a written statement and/or the submission of documentary evidence.

The chief of the bureau shall evaluate the inmate for retention at level 5 or transfer to a lower security level as described in the subsection of this policy that addresses the annual supervision level review. The chief shall determine whether there has been a diminishing of the inmate's risk to the safety of persons or institutional security, within his or her professional correctional judgment. If the chief of the bureau relies upon confidential information, he or she shall indicate this reliance and shall disclose to the inmate as much of the substance of the information as possible.

The chief shall notify the inmate of the decision. The chief may choose to verbally notify the inmate of the decision at the conclusion of the videoconference, though it is not required. In every case, the decision of the chief and supporting reasons shall be reduced to writing, and a copy shall be given to the inmate. The inmate shall be permitted to request that the chief of the bureau reconsider the decision. Such request shall be in writing, directed to the chief of the bureau and must state reasons in Support of the request.

List of Forms Appearing on Intranet

DRC2568 Security Designation Long Form
DRC2630 " , pg2
DRC2569 " , pg3

DRC2605 Initial Designation Forms, Females
DRC2606 " , pg2
DRC2607 " , pg3

DRC2098 Supervision Review Forms
DRC2094 " , pg2
DRC2629 " , pg3
DRC2338 " , pg4

DRC2663 Notice of Hearing, Level 4 Placement
DRC2664 " , pg2

DRC 2598 Notice of Hearing, Level 5 Placement
DRC 2652 " , pg2
DRC 2661 " , pg3

DRC 2658 Request for Witness

DRC 2637 Classification Committee Recommendation
DRC 2638 " , pg2
DRC 2639 " , pg3

DRC 2662 Classification Committee Record of Hearing

DRC 2627 Summary of Inmate Information

DRC 2628 Summary of Staff Information

DRC 2645 Confidential Information

DRC 2596 Notice of Appeal

DRC2653 Warden's Recommendation
DRC 2657 " , pg 2

DRC 2654 Bureau of Classification's Decision
DRC2655 " , pg2

DRC 2634 Privilege Level Review
DRC 2636 " , pg2
DRC 2642 " , pg3
DRC 2643 " , pg4

DRC 2646 Notice of Hearing, Security Level Review

DRC 2647 Security Level Review
DRC 2648 " ,pg.2

DRC 2649 Classification Committee Record of Hearing, Level 5 Rev.

DRC 2660 Recommendation of the Classification Comm., Security Rev.

DRC 2650 Recommendation of the Warden, Security Rev.

DRC 2656 Decision of the Bureau of Classification, Security Rev.

RECOMMENDED PRIVILEGE LEVELS FOR LEVELS 5 AND 4:

	Level 5B	Level 5A	Level 4B	Level 4A
Clothing	3 State Issue Uniforms	3 State Issue Uniforms	3 State issue Uniforms	3 State Issue Uniforms
Privilege Level Review	3 Months	6 Months	6 Months	N/A
Classification Status Review	Annually	Annually	Annually	Annually
Phone Calls	One ten minute call per month. All others only by request of Attorney of Record or confirmed serious illness or death in the family	Two ten minute calls per month. All others only by Request of Attorney of Record or confirmed serious illness or death in the family.	One ten minute call per week. All others only by request of Attorney of Record or confirmed serious illness or death in the family	2 times per day

	(Warden's Discretion)	(Warden's Discretion)	(Warden's Discretion)	
Recreation	5 one-hour periods per week, inside, or outside recreation areas.	5 one-hour periods per week; inside or outside recreation areas. Congregate recreation opportunity with at least one other inmate.	5 one-hour periods per week; inside or outside recreation pods. Congregate recreation with at least one other inmate.	Seven 1 ½ hour periods per week
Shaving	3 times per week	3 times per week	5 times per week	Anytime during the day.
Shower	5 times per week	5 times per week	5 times per week	Twice per day.
TV	State Issued or purchase from commissary. Programming only.	State Issued or purchase from commissary. Programming and Network.	Network and Institutional programming provided on range TV. Movie rentals	May have personal TV.

			on weekends and holidays.	
Walkman	Non	Walkman w/AM/FM w/cassette player. No cassettes permitted. Battery operated.	Walkman/Cassette AM/FM w/cassette player. Battery operated. Five (5) cassettes permitted.	Commissary Purchase or Approved Vendor
Visits	Non-Contact, 2 visits per month, per visitor for up to 2.5 hours; Attorney of record, Clergy of Record.	Non-Contact, 2 visits per month, per visitor for up to 3.5 hours; Attorney of Record, Clergy of Record.	Non-Contact, 2 visits per month, per visitor for up to 4 hours; Attorney of Record, Clergy of Record.	Contact, 2 visits per month for up to 7 hours.
Library/Legal Service	Library: 3 paperback books Legal: Per kite to Paralegal.	Library: 4 paperback books Legal: Per kite to Paralegal.	Library: 5 paperback books Legal: Per kite to paralegal.	Minimum 4 ½ hours per week.

Programming	Broadcast over TVs provided in each cell Small group programming in program booths	Broadcast over TVs provided in each cell Small group programming in program booths	Broadcast over TVs provided on range. Small group counseling, no more than four inmates.	Broadcast over TV's; Small group counseling.
Commissary Spending Limit Twice Per Month	$30.00	$50.00	$70.00	$100.00

(*seal*) Attorney General
Betty D. Montgomery

VIA OVERNIGHT DELIVERY

May 28, 2002

The Honorable James S. Gwin
United States District Judge
Federal Building & U.S. Courthouse
Two South main Street, Room 510
Akron, OH 44308

Re: *Austin, et al. v. Wilkinson, et al*
Case No. 4:01CV071

Dear Judge Gwin:

On May 23, 2002, this office mailed to your office a notebook containing a copy of Revised Policy 111-07 and the pertinent forms. Each form has a "form number." The forms are presented in numerical order, which I find confusing.

For the sake of clarity, I enclose another notebook which presents the forms in procedural sequence. A copy of the notebook is being forwarded to Staughton and Alice Lynd.

Sincerely,

BETTY D. MONTGOMERY
Attorney General

Joseph M. Mancini
Assistant Attorney General
Corrections Litigation Section
(614) 644-7233

cc: Staughton Lynd, Esq.
Alice Lynd, Esq.

Notice Of Hearing

Proposed Level 5
Security Placement

Inmate Name:	Number:
Lock:	Institution:

Purpose of Hearing: You have been referred to the classification committee for a hearing to determine whether you should be placed at Security Level 5.

Issue being considered for the proposed placement: The issue to be considered is whether your already proven conduct, in conjunction with an assessment of your overall record, constitutes a threat to the safety and security of the institution.

The previously proven behavior is described in the section of this notice with the heading, "Evidence Relied On." The committee will determine whether that behavior, together with your overall record, constitutes a threat to the safety and security of the institution. In addressing this issue, the committee will determine whether your proven behavior falls within any of the categories below.

Behavior Categories: *Indicate (with a check) which of the following behavioral categories apply to the inmate's proven behavior.*

☐ 1. The inmate has demonstrated physically or sexually assaultive and/or predatory behavior resulting in either serious physical injury or death to any person, or in an attempt to sexually assault any person, or to cause serious physical injury or death to any person. An inmate has demonstrated such behaviors when the inmate has:

☐ a. Physically assaulted another resulting in serious physical harm;

☐ b. Assaulted or attempted to assault another with a deadly weapon

☐ c. Compelled or attempted to compel another to perform sexual acts; engage in sexual conduct or sexual contact; or to submit to sexual contact; all by force or threat of force;

☐ d. Compelled or coerced another, by force or the threat of serious physical harm or death, to provide anything of value, to perform any act, or to violate any rule.

☐ 2. The nature of the criminal offense committed prior to incarceration constitutes a current threat to the security and orderly operation of the institution and to the safety of others, for example, serious assaults against law enforcement, participation in organized criminal activity or actions indicating a serious escape risk.

☐ 3. The inmate has lead, organized, or incited a serious disturbance or riot that resulted in the taking of a hostage, significant property damage, physical harm, or loss of life.

☐ 4. The inmate has conspired or attempted to convey, introduce or possess major contraband which poses a serious threat or danger to the security of the institution. The includes but it not limited to:

☐ a. Deadly weapons. "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designated or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

☐ b. Ammunition. "Ammunition" means any thing hurled by a weapon or exploded as a weapon, as bullets, gunpowder, shots, shells, bombs, grenades, rockets., etc.

☐ c. Escape instruments. "Escape instruments" include any substance, device, instrument, or article commonly used for criminal purposes, under

circumstances indicating the item is intended for criminal use in an escape attempt.

☐ d. Drugs of less than bulk amount, as defined by the Ohio Revised Code, when possessed on multiple occasions.

☐ e. Drugs for distribution. "Drugs for distribution" means any drug possessed in such amount as to subject an inmate to incarceration for at least a third degree felony as defined by the Ohio Revised Code.

DRC2598 (Rev. 05/02) DISTRIBUTION: White-records Canary-Unit File Pink-Inmate Goldenrod-Bureau of Classification

ACA 4288

Notice Of Hearing
Page 2
Proposed Level 5
Security Placement

Inmate Name:	Number:
Lock:	Institution:

☐ 5. The inmate functions as a leader, enforcer, or recruiter of a security threat group, which is actively involved in violent or disruptive behavior.

☐ 6. The inmate escaped, attempted to escape or committed acts to facilitate an escape from a level three or four (or their equivalent, close or maximum) security facility or while under supervision outside of the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plan.

☐ 7. The inmate has demonstrated an ability to compromise the integrity of staff, which resulted in threat to the security of the institution.

☐ 8. The inmate knowingly exposed others to the risk of contracting a dangerous disease, such as HIV or hepatitis.

☐ 9. The inmate through repetitive and/or seriously disruptive behavior, has demonstrated a chronic inability to adjust to level 4B as evidenced by repeated class II rule violations.

Reason(s) for the proposed placement and the evidence relied on to support of those reason(s)

Instructions: ***Set forth a detailed factual account of the incident (behavior and circumstances) that support the reason(s) for the proposed placement.***

In addition, if the incident that triggers the proposed placement is a finding of guilt of an institutional violation by the Rules Infraction Bard (RIB), attach a copy of the RIB report of the proceeding. If the event that triggers the proposed placement is a finding or plea of guilt in a criminal proceeding, attach a copy of the court's journal entry.

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DRC2652 (Rev 05/02) DISTRIBUTION: White-Records Canary-Unit File Pink-Inmate Goldenrod-Bureau of Classification
ACA 4288

Notice Of Hearing
Page 3
Proposed Level 5
Security Placement

Inmate Name:	Number:
Lock:	Institution:

Inmate Rights At Hearing

An inmate has a right to be present at the hearing and respond to the evidence presented. The inmate has a right to make an oral statement and/or submit a written statement.

An inmate has a right to call available witnesses and present documentary evidence provided that doing so would not jeopardize or threaten individual safety or institutional security. Persons at another institution may testify by telephone. Forms to request the appearance of witnesses should be obtained from and returned to the chairperson of the classification committee prior to the hearing.

The classification committee does not have the authority to re-hear issues already decided in prior disciplinary or criminal proceedings. Thus, the testimony of witnesses and documentary evidence must be relevant to the issue being considered.

A copy of this notice of hearing was serviced upon the above-named inmate on:

Date:	Time:	Staff:

☐ I wish to waive my right to forty-eight (48) hours between the time I received a copy of this notice and the time I have my hearing.

☐ I wish to waive my right to attend the hearing.

Inmate Signature:	Number:

DRC2661 (Rev 05/02) DISTRIBUTION: White-Records Canary-Unit File Pink-Inmate Goldenrod-Bureau of Classification

ACA 4288

Request For Witness
Before The Classification Committee

Inmate Being Heard:	Institution:

requests that the following person:

Name of Witness:	Institution:

appear as a witness at the hearing to consider Security Level 5 placement.

The above named witness will testify as follows:

_____

_____

_____

Inmate Signature:	Number:	Date:

WITNESS REQUEST DECISION

☐ Request Approved ☐ Request Disapproved

Reason(s):_____

_____

_____

Classification Committee Chairman:	Date:

DRC 2658 (5/02)

Classification Committee Recommendation
Proposed Security Level 5 Placement

Inmate Name:		Number
Lock:	Tape:	Institution:

The hearing was held on: _____

_____

The committee members were _____

_____

The inmate ☐ was ☐ was not present for the following reason(s): _____

_____

_____

Issue being considered for the proposed placement: The issue to be considered is whether the inmate's already proven conduct, in conjunction with an assessment of the inmate's overall record, constitutes a threat to the safety and security of the institution. In addressing this issue, the committee will determine whether the inmate's proven behavior falls within any of the categories below.

Behavior Categories: *Indicate (with a check) which of the following behavioral categories apply to the inmate's proven behavior.*

☐ 1. The inmate has demonstrated physically or sexually assaultive and/or predatory behavior resulting either serious physical injury or death to any person, or in an attempt to sexually assault any person, or to cause serious physical serious injury or death to any person. An inmate has demonstrated such behaviors when the inmate has:

☐ a. Physically assaulted another resulting in serious harm;

☐ b. Assaulted or attempted to assault another with a deadly weapon.

☐ c. Compelled or attempted to compel another to perform sexual acts; engage in sexual conduct or sexual contact; or to submit to sexual contact; all by force or threat of force;

☐ d. Compelled or coerced another, by force or the threat of serious physical harm or death, to provide anything of value, to perform any act, or to violate any rule.

☐ 2. The nature of the criminal offense committed prior to incarceration constitutes a current threat to the security and orderly operation of the institution and to the safety of others, for example, serious assaults against law enforcement, participation in organized criminal activity or actions indicating a serious escape risk.

☐ 3. The inmate has lead, organized, or incited a serious disturbance or riot that resulted n the taking of a hostage, significant property damage, physical harm, or loss of life..

DISTRIBUTION: WHITE-Records GREEN-Unit File
CANARY-Inmate PINK-Bureau of Classification
GOLDENROD-WARDEN
DRC 2637 (Rev. 05/02) ACA 4282, 4288, 4289

Classification Committee Inmate Recommendation
Proposed Security Level 5 Placement, Page 2

Inmate Last Name:	Number:

☐ 4. The inmate has conspired or attempted to convey, introduce or possess major contraband which poses a serious threat or danger to the security of the institution. The includes by it not limited to:

☐ a. Deadly weapons. "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designated or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

☐ b. Ammunition. "Ammunition" means any thing hurled by a weapon or exploded as a weapon, as bullets, gunpowder, shots, shells, bombs, grenades, rockets, etc.

☐ c. Escape instruments. "Escape instruments" include any substance, device, instrument, or article designed or specially adapted for criminal use in escape attempt; or possession or control of any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use in an escape attempt.

☐ d. Drugs of less than bulk amount, as defined by the Ohio Revised Code, when possessed on multiple occasions.

☐ e. Drugs for distribution. "Drugs for distribution" mans any drug possessed in such amount as to

subject an inmate to incarceration for at least a third degree felony as defined by the Ohio Revised Code.

☐ 5. The inmate functions as a leader, enforcer, or recruiter of a security threat group, which is actively involved in violent or disruptive behavior.

☐ 6. The inmate escaped, attempted to escape or committed acts to facilitate an escape from a level three or four (or their equivalent, close or maximum) security facility or while under supervision outside of the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plant.

☐ 7. The inmate has demonstrated an ability to compromise the integrity of staff, which resulted in threat to the security of the institution.

☐ 8. The inmate knowingly exposed others to the risk of contracting a dangerous disease, such as HIV or hepatitis.

☐ 9. The inmate through repetitive and/or seriously disruptive behavior, has demonstrated a chronic inability to adjust to level 4B as evidenced by repeated class II rule violations.

DRC 2638 (Rev. 05/02) DISTRIBUTION: WHITE-Records GREEN-Unit File CANARY-Inmate PINK-Bureau of Classification GOLDENROD-WARDEN
ACA 4282, 4288, 4289

Classification Committee Recommendation
Proposed Security Level 5 Placement, Page 3

Inmate Last Name:	Number:

Recommendation.

_____

Reasons for the Committee's Recommendation.

_____
_____
_____
_____

Evidence relied on to support the reason(s) for the recommendation.

Instruction: Set forth the specific facts (evidence) relied on to support the reason(s) for the recommendation.

_____
_____
_____
_____
_____

Was the inmate given a copy of this hearing form? ☐ YES
Was the Inmate notified of appeal procedures? ☐ YES
Was the inmate given a copy of the Notice of Appeal Recommendation for level 5 (DRC2596)? ☐ YES

Committee Member:	Committee Member:
Committee Member:	Date:

DRC 2639 (Rev. 05/02)ACA 4282, 4288, 4289

Notice Of Appeal
SECURITY LEVEL 5

Name:	Number:
Institution:	Date:

I am appealing:

☐ Recommended placement at level 5
☐ Continued placement at Level 5

The recommendation was made by:

☐ The Classification Committee
☐ The Warden

This hearing was conducted on

_____ at _____
DATE INSTITUTION

☐ I am filing this appeal within fifteen days after the Classification Committee/Warden informed me of the recommendations and action in accordance with Policy Directive 111-07.

In my opinion this decision is incorrect for the following reasons:

WARNING: You must state clearly and in detail the reasons you feel the decision is incorrect.

_____

_____

_____

(If more space is needed, attach additional sheets)

Signature:	Number:	Date:

DRC 2596 (Rev. 05/02) DISTRIBUTION: WHITE-Warden/Bureau of Classification CANARY-Inmate
ACA 4288

Warden's Recommendation
Proposed Security Level 5 Placement

Inmate Name:		Number:
Lock:	Tape:	Institution:

Issue being considered for the proposed placement: The issue to be considered is whether the inmate's already proven conduct, in conjunction with an assessment of the inmate's overall record, constitutes a threat to the safety and security of the institution. In addressing this issue, the Warden will determine whether the inmate's proven behavior falls within any of the categories below.

Behavior Categories: *Indicate (with a check) which of the following behavioral categories apply to the inmate's proven behavior.*

☐ 1. The inmate has demonstrated physically or sexually assaultive and/or predatory behavior resulting in either serious physical injury or death to any person, or in an attempt to sexually assault any person, or to cause serious physical injury or death to any person. An inmate ha demonstrated such behaviors when the inmate has:

☐ a. Physically assaulted another resulting in serious physical harm;
☐ b. Assaulted or attempted to assault another with a deadly weapon
☐ c. Compelled or attempted to compel another to perform sexual acts; engage in sexual conduct or sexual contact; or to submit to sexual contact; all by force or threat of force;
☐ d. Compelled or coerced another, by force or the threat of serious physical harm or death, to provide anything of value, to perform any act, or to violate any rule.

☐ 2. The nature of the criminal offense committed prior to incarceration constitutes a current threat to the security and orderly operation of the institution and to the safety of others, for example, serious assaults against law enforcement, participation in organized criminal activity or actions indicating a serious escape risk.

☐ 3. The inmate has lead, organized, or incited a serious disturbance or riot that resulted in the taking of a hostage, significant property damage, physical harm, or loss of life.

☐ 4. The inmate has conspired or attempted to convey, introduce or possess major contraband which poses a serious threat or danger to the security of the institution. The includes but it not limited to:

☐ a. Deadly weapons. "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designated or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

☐ b. Ammunition. "Ammunition" means any thing hurled by a weapon or exploded as a weapon, as bullets, gunpowder, shots, shells, bombs, grenades, rockets., etc.

☐ c. Escape instruments. "Escape instruments" include any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use in an escape attempt.

☐ d. Drugs of less than bulk amount, as defined by the Ohio Revised Code, when possessed on multiple occasions.

☐ e. Drugs for distribution. "Drugs for distribution" means any drug possessed in such amount as to subject an inmate to incarceration for at least a third degree felony as defined by the Ohio Revised Code.

DRC 2653 (Rev 05/02) DISTRIBUTION: WHITE-Records CANARY-Unit File PINK-Inmate GOLDENROD-Bureau of Classification ACA 4282, 4288, 4289

Warden's Recommendation – Page 2
Proposed Security Level 5 Placement

Inmate Name:
Number

☐ 5. The inmate functions as a leader, enforcer, or recruiter of a security threat group, which is actively involved in violent or disruptive behavior.

☐ 6. The inmate escaped, attempted to escape or committed acts to facilitate an escape from a level three or four (or their equivalent, close or maximum) security facility or while under supervision outside of the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plant.

☐ 7. The inmate has demonstrated an ability to compromise the integrity of staff, which resulted in threat to the security of the institution.

☐ 8. The inmate knowingly exposed others to the risk of contracting a dangerous disease, such as HIV or hepatitis.

☐ 9. The inmate through repetitive and/or seriously disruptive behavior, has demonstrated a chronic inability to adjust to level 4B as evidenced by repeated class II rule violations.

Recommendation.

_____

Reasons for the Warden's Recommendation.

_____

_____

_____

Evidence relied on to support the reason(s) for the recommendation

Instruction: Set forth the specific facts (evidence) relied on to support the reason(s) for the recommendation.

_____

_____

☐Yes ☐No Was the inmate notified of the appeal procedures?

☐ Yes ☐ No Was the inmate given a copy of the Notice of Appeal form, DRC2596?

__ Yes __ No Was the inmate given a copy of this document?

Warden/Designee's Signature:	Date:

DISTRIBUTION: WHITE-Records CANARY-Unit File
PINK-Inmate GOLDENROD-Bureau of Classification

Bureau Of Classification's Decision
Proposed Security Level 5 Placement

Inmate Name:	Number:
Institution:	

Issue being considered for the proposed placement: The issue to be considered is whether the inmate's already proven conduct, in conjunction with an assessment of the inmate's overall record, constitutes a threat to the safety and security of the institution. In addressing this issue, the bureau will determine whether the inmate's proven behavior falls within any of the categories below.

Behavior Categories: Indicate (with a check) which of the following behavioral categories apply to the inmate's proven behavior.

☐ 1. The inmate has demonstrated physically or sexually assaultive and/or predatory behavior resulting in either serious physical injury or death to any person, or in an attempt to sexually assault any person, or to cause serious physical injury or death to any person. An inmate has demonstrated such behaviors when the inmate has:

- ☐ a. Physically assaulted another resulting in serious physical harm;
- ☐ b. Assaulted or attempted to assault another with a deadly weapon
- ☐ c. Compelled or attempted to compel another to perform sexual acts; engage in sexual conduct or sexual contact; or to submit to sexual contact; all by force or threat of force;
- ☐ d. Compelled or coerced another, by force or the threat of serious physical harm or death, to

provide anything of value, to perform any act, or to violate any rule.

☐ 2. The nature of the criminal offense committed prior to incarceration constitutes a current threat to the security and orderly operation of the institution and to the safety of others, for example, serious assaults against law enforcement, participation in organized criminal activity or actions indicating a serious escape risk.

☐ 3. The inmate has lead, organized, or incited a serious disturbance or riot that resulted in the taking of a hostage, significant property damage, physical harm, or loss of life.

☐ 4. The inmate has conspired or attempted to convey, introduce or possess major contraband which poses a serious threat or danger to the security of the institution. The includes but it not limited to:

- ☐ a. Deadly weapons. "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designated or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.
- ☐ b. Ammunition. "Ammunition" means any thing hurled by a weapon or exploded as a weapon, as bullets, gunpowder, shots, shells, bombs, grenades, rockets., etc.
- ☐ c. Escape instruments. "Escape instruments" include any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use in an escape attempt.
- ☐ d. Drugs of less than bulk amount, as defined by the Ohio Revised Code, when possessed on multiple occasions.

☐ e. Drugs for distribution. "Drugs for distribution" means any drug possessed in such amount as to subject an inmate to incarceration for at least a third degree felony as defined by the Ohio Revised Code.

DRC 2654 (Rev. 05/02) DISTRIBUTION: WHITE-Records CANARY- Unit File PINK-Inmate GOLDENROD-Bureau of Classification ACA 4282, 4288, 4289

Bureau of Classification's Decision
Proposed Security Level 5 Placement – Page 2

Inmate Name:	Number
Institution:	

☐ 5. The inmate functions as a leader, enforcer, or recruiter of a security threat group, which is actively involved in violent or disruptive behavior.

☐ 6. The inmate escaped, attempted to escape or committed acts to facilitate an escape from a level three or four (or their equivalent, close or maximum security facility or while under supervision outside of the facility, resulting in physical harm or threatened serious physical harm to others or caused serious destruction to the physical plant.

☐ 7. The inmate has demonstrated an ability to compromise the integrity of staff, which resulted in threat to the security of the institution.

☐ 8. The inmate knowingly exposed others to the risk of contracting a dangerous disease, such as HIV or hepatitis.

☐ 9. The inmate through repetitive and/or seriously disruptive behavior, has demonstrated a chronic inability to adjust to level 4B as evidenced by repeated class II rule violations.

Decision.

_____

Reasons for the Bureau's Decision.

_____

_____

_____

Evidence relied on to support the reason(s) for the decision
Instruction: Set forth the specific facts (evidence) relied on to support the reason(s) for the decision.

_____

_____

_____

Provided a copy of this decision to the inmate:_____
(date)

Bureau Representative's Signature:	Date:

DRC 2655 (Rev. 05/02)

Notice Of Hearing
Security Level 5 Review

Inmate Name:		Number:
Lock:	Institution:	

You have been referred to the Classification Committee for hearing to determine whether you should be retained at Security Level 5. The hearing will be held on _____.

Issue being Considered.

The issue to be addressed is whether the reasons for your placement at Level 5 Security Classification cease to exist. In other words, the issue is whether you continue to pose a threat to the safety and security of the prison system.

The classification committee does not have the authority to re-hear issues already decided in prior disciplinary or criminal proceedings.

Inmate Rights At Hearing

An inmate has a right to be present at the hearing and respond to the evidence presented. The inmate has a right to make an oral statement and/or submit a written statement.

An inmate has a right to call available witnesses and present documentary evidence provided that doing so would not jeopardize or threaten individual safety or institutional security. Persons at atoner institution may testify by telephone. forms to request the appearance of witnesses should be obtained from and returned to the chairperson of the classification committee prior to the hearing.

The classification committee does not have the authority to re-hear issues already decided in prior disciplinary criminal

proceedings Thus, the testimony of witnesses and documentary evidence must be relevant to the issue being considered.

Staff Signature:

☐ A copy of the Classification Committee Report from your initial placement is attached.
☐ A copy of your current Security Level Review form is attached, with pre-hearing information.

A copy of this Notice of Hearing was served upon the above-named inmate on:

Date:	Time:	Staff:

DRC2646 (05/02) DISTRIBUTION: White-Records Canary-Unit File Pink-Inmate Goldenrod-Bureau of Classification ACA 4288

Recommendation of the Classification Committee
Security Level 5 Review

Inmate Name:	Number:
Date of Review Committee Hearing:	

Recommendation.

_____

Reasons for the Committee's Recommendation.

_____

_____

Evidence relied on to support the reason(s) for the recommendation
Instruction: *Set forth the specific facts (evidence) relied on to support the reason(s) for the recommendation.*

_____

_____

_____

☐ YES ☐ NO Was the inmate notified of the appeal procedures?
☐ YES ☐ NO Was the inmate given a copy of the Notice of Appeal form, DRC2596?
☐ YES ☐ NO Was the inmate given a copy of this form?

Classification Committee Chair:

Distribution: WHITE-Records GREEN-Unit File CANARY – Inmate PINK – Bureau of Classification GOLDENROD-WARDEN
DRC 2660 (Rev. 05/02) ACA 4282, 4288, 4289

Recommendation of the Warden
Security Level 5 Review

Inmate Name:	Number:
Date of Review Committee Hearing:	

Recommendation.

_____

Reasons for the Warden's Recommendation.

_____
_____
_____

Evidence relied on to support the reason(s) for the recommendation
Instruction: *Set forth the specific facts (evidence) relied on to support the reason(s) for the recommendation.*

_____
_____
_____

☐ YES ☐ NO Was the inmate notified of the appeal procedures?
☐ YES ☐ NO Was the inmate given a copy of the Notice of Appeal form, DRC2596?
☐ YES ☐ NO Was the inmate given a copy of this form?

Warden/Designee's Signature:

DRC 2650 (Rev. 05/02) ACA 4282, 4288, 4289

Decision of the Bureau of Classification
Security Level 5 Review

Inmate Name:	Number:
Date of Review Committee Hearing:	

Decision:_____

Reasons for the Decision of the Bureau of Classification:

_____
_____
_____

Evidence relied on to support the reason(s) for the recommendation
Instruction: *Set forth the specific facts (evidence) relied on to support the reason(s) for the recommendation.*

_____
_____
_____

Provided a copy of this decision to the inmate: _____

_____
(*date*)

Bureau Representative's Signature:	Date:

Distribution: WHITE-Records GREEN-Unit File CANARY–Inmate PINK – Bureau of Classification GOLDENROD-WARDEN
DRC 2656 (Rev. 05/02) ACA 4282, 4288, 4289

OHIO

(SEAL)

DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Parole Board Hearing Policy	Page 1 of 11 SECTION: NUMBER: 501.36
RULE/CODE REFERENCE:	SUPERCEDES: 501.36 dated 08/01/96
RELATED ACD STANDARDS:	EFFECTIVE DATE: December 22, 2000
RELATED AUDIT STANDARDS:	APPROVED: /s/Reginald A. Wilkinson

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the director of the Department of Rehabilitation and Correction authority to manage all divisions and institutions of the Department and to establish such rules and regulations as he prescribes.

II. PURPOSE

The purpose of this policy is to foster consistent parole board hearing procedures designed to promote public confidence and safety, as well as fair and objective decision-making.

III. APPLICABILITY

This policy shall apply to all employees of the Adult Parole Authority, institution record offices, unit management administrators, unit management staff and all offenders.

IV. DEFINITIONS

A. CENTRAL OFFICE BOARD REVIEW:

Case consideration by at least a majority of the members of the parole board, referred by any one parole board member or by a review panel. Central office board review does not require that the members be sitting together in considering the case.

B. CLINICAL RISK ASSESSMENT: (CRA)

An assessment of an inmate's likelihood of violent and/or sexual re-offending based on review of specific risk indicators associated with recidivism. The CRA is a clinical summary of specific risk factors, interactions between factors and patterns of high-risk behaviors. The CRA is not a comprehensive psychological evaluation, nor is it to be used for the purpose of planning institutional mental health services.

C. CONFLICT OF INTEREST:

A condition arising whenever a parole board member or hearing officer determines that a personal relationship exists with any principal participant in a case which would impair (unreadable).

D. CONTINUED HEARING:

A subsequent release consideration on or about a date established by the parole board at a first hearing or at a previously continued hearing.

E. ELIGIBILITY DATE:

A date calculated pursuant to statute which indicates when an inmate can be considered for release.

F. FIRST HEARING:

A regular parole release consideration hearing calculated pursuant to Sections 2967.13, 2967.19, 2967.191, 2967.192 and 2967.193 of the Ohio Revised Code.

G. FULL BOARD HEARING:

A hearing conducted or case considered before at least a majority of the members of the parole board sitting together when the case meets the criteria for a full board hearing as prescribed in thi. policy or when the case is submitted to a full board hearing pursuant to Section 5149.101.

H. HEARING OFFICER INTERVIEW:

The portion of a hearing process wherein an inmate personally appears before one or more hearing officers who review and evaluate available information concerning the inmate's case and formulates a recommendation which is provided to a designated parole board member.

I. MAXIMUM EXPIRATION DATE:

The last day of a period of incarceration or community supervision which signifies that the maximum sentence imposed by the court has been served in its entirety.

J. PAROLE BOARD HEARING PANEL:

The body of the parole board designated by the parole board chair to conduct release consideration hearings. A panel shall consist of two or more members or one or more members and one or more hearing officers.

K. PAROLE BOARD MINUTES:

The official public record of the decisions of the parole board.

L. PAROLE ON OR AFTER (POA):

The earliest date upon which an inmate may be released on parole supervision. Given the individual requirements of each case, the actual release may be extended to any date after the POA date.

M. PAROLE ON OR BEFORE (POB):

The latest date upon which an inmate shall be released from custody. The. parole board establishes this date whenever a parolee is held in custody for an alleged parole violation and it is determined that the parolee is not guilty of the violation.

N. PAROLE PANEL HEARING:

A hearing wherein an inmate personally appears before a parole board hearing panel, either in person or via teleconferencing, for the purpose of the review and evaluation of available information and a determination as to whether to release the inmate to community supervision.

O. PRE-PAROLE MENTAL HEALTH TREATMENT SUMMARY

A summary of mental health care prepared by institutional mental health staff to assist in ensuring continuity of mental health care once the offender is released to the community.

P. PRE-RELEASE RECORD REVIEW:

A file review of an inmate's progress and institution conduct prior to the inmate's actual release.

Q. PROJECTED RELEASE DATE (PRD):

An action taken by the parole board to establish a future date of release not less than six months nor more than ten years from the date of hearing. Release on this date is based on the inmate complying with program and institution conduct requirements.

R. REVIEW PANEL:

Three parole board members, as designated by the parole board chair on a rotating basis, responsible to review certain parole board panel

decisions with authority to approve the panel decision or reject the panel decision and refer the case for further review.

S. RECOMMENDATION REVIEW:

The portion of a hearing process wherein a designated parole board member reviews the recommendation provided by a hearing officer or officers following a hearing officer interview.

T. RESCHEDULED HEARING:

An action taken by a parole board hearing panel or by a hearing officer to postpone a hearing to a future date whenever there is a need for additional information or clarification of existing information.

U. SHOCK PAROLE:

A release consideration for those inmates meeting the eligibility criteria provided in Section 2967.31 of the Ohio Revised Code and/or 5120:1-1-06 of the Administrative Code.

V. TRANSITIONAL CONTROL:

A release consideration for those inmates meeting the eligibility criteria provided in Section 2967.26 of the Revised Code or 5120-12-01 of the Administrative Code.

W. VIOLATION HEARING:

An administrative hearing conducted by a representative of the parole board or designee of

the chief of the Adult Parole Authority to determine whether an offender has violated one or more of the conditions of release and, if so, the specific sanction that should be imposed upon the offender.

V. POLICY

The Ohio Parole Board will conduct hearings in a fair and consistent manner while recognizing the unique individuality of each offender. It shall operate in a professional, efficient manner, and will consider community consciousness, public safety and the interests of criminal justice in rendering its decisions. The Parole Board's procedures will utilize resources in an efficient manner, concentrating the members' attention on initial hearings, offense behaviors such as murder, rape and other acts of significant interpersonal violence and recommendations for or against the granting of clemency.

Decision-making involves the exercise of discretion. Unlimited discretion is to be eliminated. Necessary discretion is to be structured. Persons who are stakeholders in the decision-making process are notified pursuant to the Ohio Revised Code. Fairness and equality shall be the standards by which inmates, releasees, staff and the public are treated.

VI. PROCEDURE

A. Pre-Hearing Preparation:

In anticipation of parole board hearings, institutional record offices and/or unit management staff will:

1. Provide written notice to each inmate within 90 days of admission to an institution specifying the first legal eligibility date for a release hearing and maximum expiration of sentence.

2. During inmate orientation, provide a pamphlet and brief verbal explanation of the Ohio Parole Board guidelines, the process to request a reconsideration of the decision by the addition of new information, and the factors which are considered in a release decision by the board (Administrative Rule 5120:1-1-07). Interpreters should provide this information to non-English speaking and special needs offenders, as well as advise them that an interpreter may assist them at hearings.

3. Parole Board Parole Officers will be assigned to prepare case-specific information for hearings and interviews in a manner designated by the Parole Board Chair. Parole Officers may be assigned other duties as necessary to assist in coordinating Parole Board hearings, interviews and reviews.

4. Notify each inmate, in writing, at least 14 days in advance of any scheduled hearing before the Ohio Parole Board.

5. Make all notifications to judges and prosecutors within required time frames as specified in Section 2967.12 of the Ohio Revised Code. The Office of Victim Services shall provide notice of hearings to

qualified victims or victims' representatives.

B. Hearing Preparation:

1. The parole board chair schedules parole board members and hearing officers to conduct hearings or interviews based on the number of eligible inmates. These hearings or interviews should, to the extent administratively possible, be conducted 60 days prior to the inmate's month of release eligibility.

2. At each institution where hearings are conducted, the parole board chair designates, in advance, one parole board member to be responsible for assigning cases, determining which cases, if any, are subject to hearing officer interviews and coordinating logistics with institution staff.

C. Hearing/Interview Process:

1. All hearings shall be conducted in a setting which the parole board chair or designee believes will provide privacy, security, comfort, and a dignified atmosphere.

2. Attendance at parole hearings or interviews is limited to parole board staff, the inmate, and if required, special needs inmate's representative such as an interpreter, translator or a sign language specialist, or other persons authorized by the parole board chair or designee to observe the hearing process. When deemed appropriate

or necessary by the parole board staff present, security personnel may also be present in the hearing room. Unit management staff may provide input prior to the hearing.

3. Parole board members and hearing officers shall not participate in any aspect of the decision making process when a conflict of interest exists in a particular case. The parole board chair or designee should be informed of the employee's decision not to participate.

4. Except for full board hearings, each hearing or interview will be conducted with the inmate personally present or present via telecommunications, unless the parole board chair or designee determines for good cause shown that attendance by the inmate is inappropriate or unwarranted. Inmates refusing to appear before the parole board shall not be denied release based on this refusal. For the first such refusal, the case shall be rescheduled for sixty (60) days. Unit staff, in an attempt to determine the reasons for the refusal and to resolve the problem, shall interview the inmate. For any subsequent refusal to appear the hearing will be conducted without the inmate present. Reasons for conducting the hearing without the inmate present will be recorded on the parole board decision sheet.

5. Each interview or hearing will include a discussion or presentation to the inmate of the factual information upon which the

decision is to be based. This information shall include but is not limited to:

a. Brief details of the committing offense;

b. The offender's role when co-defendants are involved;

c. The offender's prior criminal record;

d. The offender's institutional record (disciplinary and rehabilitative); and

e. The parole board guidelines applicable to the inmate's case.

6. Each inmate is permitted to respond to the factual information provided at the hearing and submit any additional information either verbally or in writing, that the inmate feels is pertinent to the decision making process.

7. Confidential information shall not be released to the inmate, however inmates are informed if confidential information was considered. Confidential information includes:

   a. Responses from judges, prosecutors, victims and victim representatives;

   b. Information noted in official records as confidential or obtained under promise of anonymity;

   c. The pre-sentence investigation and recommendation as directed by Section 2951.03 of the Ohio Revised Code;

   d. Any information which could result in physical harm to any person or diagnostic or medical opinions which, if disclosed, could seriously disrupt rehabilitative programs, or any information deemed confidential by the hearing officer(s) or parole board member(s) conducting the hearing or interview.

8. Parole board staff should review case materials before the inmate is brought into the hearing room or prior to the initiation of a teleconferencing hearing, and are responsible for recording and preserving a summary of the major issues, statements and findings in the hearing or interview.

D. Decision Making:

1. Prior to making any release or denial recommendation or decision, hearing officers and parole board members:

   a. Shall consider those factors specified in Administrative Regulation 5120:1-1-07 (Appendix A);

   b. May consider those factors specified in Administrative Regulation 5120:1-1-07 (Appendix B);

   c. Shall review and consider the inmate's parole board guidelines; and

   d. Shall consider, for cases under the jurisdiction of the Interstate Compact Agreement on Parole, the parole resources of the receiving state and their ability to provide mandated conditions of release.

2. Any release consideration may be conducted as a parole panel hearing or be conducted as a hearing officer interview followed by a recommendation review.

3. Whether a case is to be decided through a panel hearing or a hearing officer interview followed by a recommendation review, the hearing officer(s) and parole board member(s) may;
   A. recommend, approve or deny the granting of parole, shock parole or transitional control

   B. recommend and approve the establishment of a projected release date or,
   C. continue consideration of specified cases to a future hearing date,
   D. continue cases to the maximum expiration date.

4. Hearing panels, whether a parole panel or when conducted as a hearing officer Interview followed by a recommendation review, shall make every effort possible to reach consensus as to the decision to be rendered. If, however, agreement cannot be achieved, the decision of the parole board member shall override the recommendation of the hearing officer, if such decision is consistent with the applicable parole board guideline range for the particular case. If agreement cannot be achieved and the decision of the parole board member constitutes a guideline departure the case will be referred to a review panel. The review panel shall review the information and the recommendations of the hearing panel members and render a decision in the case. The decision of the review panel shall be by majority vote of the three members and is not subject to further review unless the decision is subject to an automatic referral for central office board review or a full board open hearing is conducted following the acceptance of a petition.

5. When a decision is to be made through a hearing officer interview followed by a

recommendation review, the parole board member may do one of the following:

a. Approve the hearing officer's recommendation to release the inmate to parole or transitional control or establish a projected release date and may approve or modify the terms or conditions attached to the release or projected release recommendation;

b. Approve the hearing officer's recommendation to deny release and continue consideration of specified cases to a future hearing date or to the maximum expiration date

c. Reschedule the case for an appearance before a parole board hearing panel. If the recommendation review is being conducted on the same day and institution site as the hearing officer interview and the parole board member desires a panel hearing, the hearing, to the extent administratively possible, shall be conducted on the same day.

6. If any decision is to deny release and establish a projected release date, a future hearing date pursuant to the parole board guidelines, or continue the case to the maximum expiration date, the hearing panel, with agreement of all the hearing panel members, has the discretion to increase or decrease the applicable guideline range by one range without

further review. In establishing the projected release date, a future hearing date, or continuing the case to the maximum expiration date, any departure from the applicable guideline range greater than one range shall be referred for a review by the parole board chair or chair's designee. In establishing a future hearing date the length of continuance shall not exceed ten (10) years. Written reasons for any increase or decrease of the applicable guideline range shall be provided on the parole board decision sheet.

7. The parole board will give special attention to certain offenders and to certain offense categories to ensure public safety and public confidence in the release process.

a. If a parole board member is recommending the release of an inmate who is serving a sentence for any offense which carry a penalty of life imprisonment or any physically assaultive sex offense or any attempt, conspiracy or complicity to commit any of the above offenses or in any case receiving national or unusual state or local attention because of the nature of the crime, arrest, trial, or position in the community of the offender and/or the victim, the parole board member shall refer such inmate's case for a central office board review.

b. In any case where the offense(s) for

which the inmate has been committed to the institution resulted in serious bodily injury to the victim or is an offense under Chapter 2907 of the Revised Code (sex offenses), the parole board may request a clinical risk assessment (CRA) based on criteria developed by mental health services. Where the inmate's history or current treatment reflect that the inmate is or may be seriously mentally ill, the parole board may request pre-parole Mental Health treatment summary unless the parole board determines that this treatment summary would neither factor in the release decision nor assist the board in making a decision about appropriate conditions upon release. The pre-parole mental health treatment summary is completed by institutional mental health staff.

C. Programs within the institutions which help inmates to identify problem areas, deficiencies, compulsions, or addictions and which provide inmates alternatives to negative behaviors are important. Inmates in denial or those refusing to participate in programs designed to reduce or alleviate further criminal behavior, shall not be given favorable consideration for release, if, in the opinion of the parole board member(s) deciding their case, the inmate continues to present an

unacceptable risk of violent and assaultive conduct.

D. Appropriate conduct and adherence to institution rules and regulations are necessary for the orderly and safe operation of a correctional institution. Inmates who present an unacceptable risk to other inmates and staff represent an unacceptable risk to the community. Any inmate with a maximum security classification or any other classification title utilized to denote the most serious security risk inmates, at the time of release eligibility, shall not be granted release. A continued date shall be established which, to the extent possible, gives at least sufficient time for the inmate to be eligible for a security classification review which may lead to a security classification reduction. Release at any such projected release date shall be conditioned upon the inmate receiving a security classification less than maximum, or any other security classification title utilized to denote the most serious security risk inmates.

8. The parole board should not accept the presence of a detainer as an automatic bar to parole, nor should the board necessarily deny parole consideration to an offender who is a foreign national.

9. The decision will be provided to the inmate, both verbally and in writing, immediately following the hearing. Written reasons must be given for decisions. Decisions may be subject to a mandatory quality assurance review. Any corrected information, guideline changes or decision modifications resulting from a quality assurance review shall be provided to the inmate in writing or may result in a rehearing of the case. Decisions on hearings requiring further review should be made available as soon as administratively possible following the final decision.

10. When release is denied and/or a projected release date is established, the parole board will inform the inmate in writing of the month and year of his or her next release consideration or projected release date and the reasons for the decision.

11. A pre-release record review shall be conducted by a parole board hearing officer prior to the projected release date and the following shall be considered:
    A. change in security status
    B. institution rule infractions
    C. failure to comply with board mandated programs
    D. outstanding program achievement

    Inmates with significant institution rule infractions since the PRO was established may have the PRO rescinded and a new hearing ordered. At the rehearing the inmate may be assessed months for each significant violation which are to be added to the original PRD.

Inmates with improved security status and/or outstanding program achievement since the PRO was established may have the PRO rescinded and a new hearing ordered. At the rehearing the inmate may be credited with additional months and an earlier PRD established.

Inmates meeting the eligibility criteria for transitional control may have the original PRO approved and be granted release to transitional control for a period of up to six months prior to the original PRO.

12. Once a decision has been finalized, including any mandatory review as specified in the quality assurance review policy, notification of the decision shall be provided to requesting victims and/or victim representatives pursuant to ORC 2930.16(C)(1).

13. Parole board minutes are considered public information once certified by the parole board chairperson.

APPENDIX A

FACTORS THAT *WILL* BE CONSIDERED IN MAKING RELEASE DECISIONS

Any reports prepared by any institutional staff member relating to the inmate's personality, social history and adjustment to institutional programs and assignments.

Any official report of the inmate's prior criminal record, including a report or record of earlier probation or parole.

Any presentence/post sentence report.

Any recommendations regarding the inmate's release made at the time of sentencing or at any time thereafter by the sentencing judge, presiding judge, prosecuting attorney or defense counsel.

Any reports of physical, mental or psychiatric examination of inmate.

Such other relevant written information concerning the inmate as may be reasonably available, except that no document related to the filing of a grievance under Rule 51 20:9-31 of the Administrative Code shall be considered.

Written or oral statements by the inmate, other than grievances filed under Rule 51 20:9-31 of the Administrative Code.

APPENDIX B

FACTORS THAT *MAY* BE CONSIDERED IN MAKING RELEASE DECISIONS

The inmate's ability and readiness to assume obligations and undertake responsibilities, as well as the inmate's own goals and needs.

The inmate's family status, including whether his/her relatives display an interest in the inmate or whether he/she has other close and constructive associations in the community.

The type of residence, neighborhood, or community in which the inmate plans to live.

The inmate's employment history and his/her occupational skills.

The inmate's vocational, educational and other training.

The adequacy of the inmate's plan or prospects on release.

Any recommendations made by the Sentencing Court.

The inmate's conduct during his term of imprisonment.

The inmate's behavior and attitude during any previous experience of probation, furlough, parole, or other administrative release, and recency of such experience. The availability of community resources to assist the inmate.

The nature of the offense for which the inmate was convicted.

The inmate's pattern of criminal or delinquent behavior prior

to the current term of imprisonment.

The physical and mental health of the inmate as they reflect upon the inmate's ability to perform his/her plan of release.

The presence of outstanding detainers against an inmate.

Any recommendations made by the staff of the Department of Rehabilitation and Correction or any of its agencies.

Any other factors which the board determines relevant, except for documents related to the filing of a grievance under Rule 5120:9-31 of the Administrative Code.

DRC 1362

Supermax Prisons: Overview and General Considerations

by

Chase Riveland

January 1999

This document was developed under Technical Assistance #98P4002 from the National Institute of Corrections, U.S. Department of Justice. Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the U. S. Department of Justice.

[8] Section 4. Operational Issues

Many management and operational issues gain heightened importance in extended control facilities. Some of these are:

- The criteria by which inmates are admitted to or excluded from the facilities,
- How inmates are managed,
- The services they are provided,
- The manner in which they are expected to behave,
- The amount of human contact they have,
- The allowable use of force and control of the use of force,
- The criteria and process for release from extended control.

The potential for abuse in an environment that prioritizes control of human beings, who by definition or in reality are the "worst of the worst," can be mitigated by thoughtful attention to the manner in which such facilities are operated.

The agency and facility mission and objectives, which include humane treatment, reduction of anger and violence, and reintegration into general population, should be clearly stated and affirmed in operations, programs, and staff training. The agency planning to operate such a facility, or evaluating its existing operation, should recognize the critical

importance of the extended control mission and operational practices, including those discussed next.

Classification

Most prison classification systems have evolved over the last two decades from very subjective means of classifying inmates to relatively objective systems. This move toward objectivity has occurred mainly to avoid unbridled discretion and to incorporate into classification instruments the philosophical and policy preferences significant to the agency.

Typically the classification process will allow for the orderly determination of the level of custody an inmate requires, based on criminal and behavioral history; the medical, psychological, and programmatic needs and limitations of the inmate; and the type of institution that can best meet those considerations. Objective classification systems have not only helped correctional agencies defend their placement decisions when challenged, but have helped them attempt to place individuals in the least-restrictive facility—and therefore presumably the least costly. Objective classification systems also generally provide inmates with a known path for moving to less secure facilities and incentives for behaving appropriately, working, and pursuing improvement programs.

It is therefore wise for agencies that are operating or planning to operate extended control facilities to assure that the process for identifying inmates for placement there is at least consistent with and preferably an integral part of the agency's classification process. This will probably assist in legal defense of the placements as well as help avoid the overuse—or inappropriate use—of very expensive housing. Inherent in using the classification process to determine an inmate's eligibility for extended control is that the criteria for

admission are clearly articulated, non-ambiguous, and consistent with the agency's disciplinary process.

Many agencies operate under administrative rule or policy that provides a mechanism and authorization for placement of an inmate in administrative confinement or segregation when he/she is deemed to be a threat to the safety, security, or orderly operation of the institution. This is often a non-disciplinary status—that is, the placement is not a penalty with a determinate time affixed to it, but is based on a pattern or history of dangerousness or unconfirmed but reliable evidence of pending disruption.

With the advent of extended control facilities and specific criteria for placement, agencies should carefully consider what impact the need or requirement to provide objective or behaviorally based criteria for admission there would have on administrative segregation decisions. In many agencies, administrative segregation of an inmate who may be a threat to safety, security, or order is an approved remedy without application of objective criteria or verified misconduct. Wardens peri-[9]odically invoke this procedure as a preventative or protective measure based on strong belief that an inmate's continued presence in the general population may create a threat to safety and security. Following periodic reviews, segregation of such inmates may then be continued, despite exemplary behavior in segregation, because of the strong belief that the inmate's violent proclivities and/or intentions to harm others or threaten security of the facility when given the opportunity remain unchanged.

Hans Toch and Kenneth Adams, in *The Disturbed Violent Offender*, discuss the management of offenders who are viewed as having mental health deficiencies and who are violent. They differentiate between the *disturbed* violent offender and the disturbed *violent* offender. Herein lies one of the numerous classification difficulties related to the

protection of others by segregation of offenders with a history and potential of violence. Diagnosis, prediction, risk assessment, and identification of causal factors to violent acting out often defy objective criteria and invite a significant degree of subjectivity. Prison administrators should be cognizant of that difficulty in defining admission, release, and length of stay criteria.

Once an inmate is placed in an extended control facility, specific classification review periods are advisable, either chronological or event-driven, or both. The reviews should provide the inmate with the opportunity to offer information that would lead to consideration of a reduced custody placement and to be informed of the conditions that must be met for such consideration.

It would be prudent to have the final authority for approving admission to, retention in, and release from an extended control facility rest at the highest levels of the organization. This would preclude—or minimize— potential abuse of the policy criteria for admission and release and also raise the level of organizational consciousness of the seriousness of such placements.

Programming

Decisions on what types of programming to provide and how should be well thought out. Obviously the more programs available to the inmates, the less vulnerable the facility will be to legal challenge and the more likely that inmates' negative reaction to isolation will be ameliorated. Programming for this purpose includes education, work opportunities, exercise, and various other programs aimed at improving the inmates' behavior, knowledge, or skills.

It would be prudent to have the final authority for approving

admission to, retention in, and release from extended control rest at the highest levels of the organization.

Education is provided in a variety of ways in extended control facilities around the country. Some agencies allow television in the cells and provide education or self-help programs through intra-institution cable. Some supplement this with instructors providing assistance through cell-front visits. Others allow small congregate classes in day rooms or special rooms in close proximity to the housing units. Some provide no educational programs at all.

Most allow no work activities, although they might provide some work opportunities in transition programs for inmates being prepared to leave the extended control environment.

Exercise in most extended control facilities is limited to three to seven hours (in one-hour intervals) per week, generally in an indoor space or small, secure, attached outdoor space. Usually exercise is provided to one inmate at a time and the inmate is escorted in restraints by two or more correctional officers to and from the exercise space. Congregate exercise occurs only in transition programs provided in some facilities.

Agencies evaluating their extended control facilities or planning new ones should pay close attention to exercise and how they provide it. It is a critical issue not only because of the human, health, and legal issues it presents, but for the staffing cost and security implications. The number of staff required to move each inmate from a cell to the exercise space and back three to seven times each week is considerable. As these events also constitute the most frequent time that the inmate is out of his/her cell, they also present the most likely opportunity for resistive or combative behavior or the exchange or introduction of contraband

Most other types of programming offered in extended control facilities, such as substance abuse treatment, anger management, and vocational training, are provided only through television, correspondence, or

BRIEF SUMMARY OF INMATE PROFILES

The profiles of the inmates who were approved for transfer to the Ohio State Penitentiary are based on all 246 inmates who had been transferred by the end of November 1998.

Since there is no master list of inmates who were recommended for transfer to OSP but who were rejected for transfer, the profiles are based on a non-random sample of inmates who were known to have been recommended and disapproved and whose names happened to be available.

Because of the way in which inmates were originally recommended for transfer to OSP (from Death Row and MANCI and A.C. at SOCF), these first transfers are probably not representative of the inmates who will be recommended and approved for transfer in the future. Therefore, not too much should be read into these data.

There are a few interesting points about these profiles:

- There does not appear to be a difference between accepted and rejected inmates on the basis of race, age, percentage of their aggregate minimum sentence already served, or whether the inmates was in a special management status at time of recommendation.

- Inmates whose transfer to OSP was approved tend to be more likely to have been convicted of aggravated murder or murder and to have had an additional conviction (generally for aggravated murder, murder or some degree of assault) while in prison. Both

groups are overwhelmingly likely to have originally been convicted of a violent offense: 100% of the rejected group and 96.8% of the accepted group.

- The majority of the inmates accepted for transfer were deemed appropriate for OSP because of patterns of violence and/or extremely serious assaults, particularly assaults involving the use of a weapon. Other reasons included conveying drugs or other contraband into an institution, holding a leadership or enforcement position in a security threat group, or constituting a serious escape risk. In two cases, we were unable to determine from the inmate's file why his transfer to OSP was approved. **Overall, it does appear that the inmates approved for transfer through the end of November do in fact meet the criteria set forth in DRC policy 111-07.**

- The reasons cited for denying transfer generally were that the inmate was in fact seriously mentally ill or the alleged assault was not serious (i.e., no injury was reported) or the behavior did not constitute a pattern of assault. **As with the accepted inmates, it appears that the rejection of these inmates for transfer to OSP is in line with departmental policy.**

- Comparing the transferred and rejected groups in terms of the identity of their assault victims shows that both groups are much more likely to have assaulted CO's or other staff members than other inmates, although the group transferred to OSP is somewhat more likely than the rejected group to have seriously assaulted another inmate. There is no difference between the groups in terms of their likelihood of assaulting a female staff member.

TABLE 7:

AC STATUS AT TIME OF TRANSFER

		Frequency	Percent
Sent			
	Not in AC	48	20.0
	In AC	192	80.0
	Total	240	100.0
	Missing	1	
Not Sent			
	Not in AC	12	28.6
	Sent In AC	30	71.4
	Total	42	100.0
	Missing	1	

* * *

TABLE 9:
SECURITY LEVEL AT TIME OF TRANSFER TO OSP

		Frequency	Percent
Sent	Max 4	213	89.5
	Close 3	22	9.2
	Med 3	2	.8
	Min 2	1	.4
	Total	238	100.0
	Missing	3	
Not Sent	Max 4	43	100.0

* * *

TABLE 12:
REASONS OFFENDERS SENT TO OSP

	Frequency	Percent
Assault	79	32.8
Pattern of Violence	57	23.7
Riot Related	30	12.4
Drugs	27	11.2
Security Threat Group Member	13	5.4
Multiple reasons	12	5.0
Threats/Extortion	9	3.7
Escape Risk	6	2.5
Arson	5	2.1
Weapons	2	.8
Obscene/Seductive	1	.4
Total	241	100.0

* * *

TABLE 16: ASSAULT TYPE

		Frequency	Percent
Sent	Attempt	2	3.9
	Weapon	25	49.0
	Spitting/Flinging	1	2.0
	Body (fists, feet, etc)	21	41.2
	Attempt throw off range	2	3.9
	Total	51	100.0.
	Missing	28	
Not Sent	Attempt	2	16.7
	Weapon	2	16.7
	Spitting/Flinging	2	16.7
	Body (fists, feet, etc.)	6	50.
	Total	12	100.
	Missing	3	

Plaintiff's Exhibit Austin-5
4:01cv071

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED
99 DEC – 1 AM 8:39
JAMES L. SPAETH
CLERK OF COURTS

STATE OF OHIO, WARREN COUNTY
IN THE COURT OF COMMON PLEAS

STATE OF OHIO,) SEPTEMBER TERM, 1999
Plaintiff,)
)CASE NO. 99CR18314
-vs-)
)VERDICT-NOT GUILTY
CHARLES AUSTIN,) COUNT 1
)
Defendant.) *318-205*

We, the Jury in this case, duly impaneled and sworn and affirmed, find the Defendant CHARLES AUSTIN NOT GUILTY OF FELONIOUS ASSAULT.
November 30, 1999

1. /s/ Dan Ward
2. /s/ Annabelle Downing
3. /s/ Deborah Stephenson
4. /s/ Sarah J. Gamnion
5. /s/ Mary Lee McCormick
6. /s/ Jennifer Bacevich
7. /s/ Bonnie Butler
8. /s/ Nancy Fields
9. /s/ Karen Sebright
10. /s/ Darlene Hicks
11. /s/ Clarine Arby
12. /s/ Jerry Wartham

WARREN COUNTY

COMMON PLEAS COURT
JUDGE P. DANIEL FEDDERS
JUDGE NEAL B. BRONSON
500 JUSTICE DRIVE
LEBANON, OHIO 45036

CERTIFIED COPY
JAMES L. SPAETH, CLERK
WARRANT COUNTY, OHIO
COMMON PLEAS COURT
BY /s/ James L. Spaeth / Clerk
~~DEPUTY~~

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED
99 DEC – 1 AM 8:39
JAMES L. SPAETH
CLERK OF COURTS

STATE OF OHIO, WARREN COUNTY
IN THE COURT OF COMMON PLEAS

STATE OF OHIO,	)
	) SEPTEMBER TERM, 1999
	)
Plaintiff,	)
	) CASE NO. 99CR18314
-vs-	)
	) VERDICT-NOT GUILTY
CHARLES AUSTIN,	) COUNT 2
	)
Defendant.	)

318-206

We, the Jury in this case, duly impaneled and sworn and affirmed, find the Defendant CHARLES AUSTIN NOT GUILTY OF POSSESSION OF DEADLY WEAPON WHILE UNDER DETENTION.
November 30, 1999

1. /s/ Dan Ward
2. /s/ Annabelle Downing
3. /s/ Deborah Stephenson
4. /s/ Sarah J. Gamnion
5. /s/ Mary Lee McCormick
6. /s/ Jennifer Bacevich
7. /s/ Bonnie Butler
8. /s/ Nancy Fields
9. /s/Karen Sebright
10. /s/ Darlene Hicks
11. /s/ Clarine Arby
12. /s/ Jerry Wartham

WARREN COUNTY

COMMON PLEAS COURT
JUDGE P. DANIEL FEDDERS
JUDGE NEAL B. BRONSON
500 JUSTICE DRIVE
LEBANON, OHIO 45036

CERTIFIED COPY
JAMES L. SPAETH, CLERK
WARRANT COUNTY, OHIO
COMMON PLEAS COURT
BY /s/ James L. Spaeth / Clerk
~~DEPUTY~~

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED
99 DEC – 1 AM 3:14
JAMES L. SPAETH
CLERK OF COURTS

STATE OF OHIO, WARREN COUNTY
IN THE COURT OF COMMON PLEAS

STATE OF OHIO,	) SEPTEMBER TERM, 1999
Plaintiff,	)
	) CASE NO. 99CR18314
-vs-	)
	) ENTRY
CHARLES AUSTIN,	)
Defendant.	)

318-207

This cause came on for Trial on November 29 & 30, 1999. The Jury, having heard the evidence and arguments of counsel found the Defendant, CHARLES AUSTIN, **NOT GUILTY**, and the defendant was so informed.

It is therefore, CONSIDERED, ORDERED, and DECREED that Judgment be, and the same is hereby entered in favor of the Defendant.

/s/ P. Daniel Fedder
JUDGE, COMMON PLEAS COURT

Distribution:
Prosecutor's Office
Mr. Jeffrey Kirby

CERTIFIED COPY
JAMES L. SPAETH, CLERK
WARRANT COUNTY, OHIO
COMMON PLEAS COURT
BY /s/ James L. Spaeth / Clerk
~~DEPUTY~~

BY: /s/James L. Spaeth/Clerk
~~DEPUTY~~

Plaintiff's Exhibit Austin-8
4:01cv071

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

(seal)

1050 Freeway Drive North
Columbus, Ohio 43229

Bob Taft, Governor — Reginald A. Wilkinson, Director
www.drc.state.oh.us

February 24, 2000

Charles Austin 206-996
Ohio State Penitentiary
878 Coitsville Hubbard Road
Youngstown OH 44505

Dear Mr. Austin:

Thank you for your letter dated February 15, 2000 regarding your status at the Ohio State Penitentiary (OSP).

The verdict of an outside court case does not affect the findings of the internal rules infraction board nor the classification action which prompted your placement at OSP. Therefore, your status will remain at high maximum until such time as you are recommended for reduction.

If you have any additional questions, please do not hesitate to contact this office.

Sincerely,

/s/ Norm F. Hills

Norm F. Hills
North Regional Director
cc: Warden Dave Johnson
File

Plaintiff's Exhibit Benge-9
4:01cv071

SEAL Ohio Department of Rehabilitation And Correction

Ohio State Penitentiary
P.O. Box 1436
Youngstown, Ohio 44501

Bob Taft, Governor Reginald A. Wilkinson, Director
www.drc.state.oh.us

TO: Michael Benge
#276-821
FROM: Warden Johnson, OSP */s/*
DATE: February 9, 2000
SUBJECT: Re-Appeal of Recommendation for High Maximum Security Appeal

I have reviewed your appeal of the Classification Committee action conducted on 1/04/00. I find no procedural errors in this hearing, and I affirm the decision of the Committee that you continue to represent the highest level of threat to the security of our institutions. Only continued cooperation and participation in programs will result in you being viewed as less of a threat.

I find no procedural errors, and I agree with the committee that your current security level is appropriate.

You may further appeal this decision to the Bureau of Classification in Columbus, Ohio.

cc: Unit file
Received 2-11-00

Plaintiff's Exhibit Benge-15
4:01cv071

SEAL Ohio Department Of Rehabilitation And Correction
Ohio State Penitentiary
P.O. Box 1436
Youngstown, Ohio 44501

Bob Taft, Governor Reginald A. Wilkinson, Director
www.drc.state.oh.us

March 12, 2001

Michael Benge, # 276-821
Ohio State Penitentiary
878 Coitsville Hubbard Road
Youngstown OH 44505

Dear Mr. Benge:

Thank you for your recent letter of appeal to the recommendation that you be continued at high-maximum security at The Ohio State Penitentiary. According to my records, you were seen by the Review Committee on January 8, 2001.

The information you provided and your records have been reviewed in accordance with AR 5120-9-53 and DRC Policy 111-07. The recommendation of the Bureau of Classification is affirmed and it is the decision of this writer to approve your continuance at high maximum security. there is no further appeal available to you in this matter. You will be seen again by the review committee during the month of January, 2002.

If you have any additional questions, please do not hesitate to contact this office.

Sincerely,

/s/ Stephen J. Huffman

Stephen J. Huffman
North Regional Director

cc: Warden Todd Ishee
Bernard Ryznar
File

(Rev. 3-2001)

Plaintiff's Exhibit DeJarnette-2
4:01cv071

TO: Alan J. Lazaroff, Warden
Orient Correctional Institution
/s/ R.E. Forrest

FROM: R.E. Forrest, Deputy Warden of Operations
Orient Correctional Institution

SUBJECT: High-Max Review
RE: Dejarnette 275-295

In accordance with ODR&C policy 111-07 (High Maximum Security, I chaired a review committee specific to the above named inmate for possible placement to High Maximum Security. The committee members were R.E. Forrest (Deputy Warden of Operations), M. Miller (Deputy Warden of Special Services) and H. Eisel (Psychologist).

After review of the inmate's behavior record and consideration of his response during the committee's interview of him, the committee unanimously that placement of this man to High Maximum Security is not appropriate. the committee agrees that the inmate's behavior warrants placement into a strictly controlled environment and suggests that this man be considered for placement in Administrative control.

Submitted for your action and/or disposition.

9/18/98
Recommend Admin. Control
/s/ Alan J. Lazaroff

Plaintiff's Exhibit DeJarnette-3
4:01cv071

SEAL Ohio Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

George V. Voinovich, Governor — Reginald A. Wilkinson, Director

MODIFICATION OF TRANSFER	Date: 9/21/98
To: Bernie Ryznar, Chief, Classification	From: Alan J. Lazaroff, Warden
Subject: A275-295, DeJarnette, James (B) Max	

We are requesting authorization to transfer the above named inmate(s) from the

Orient Correctional Institution to the Administrative Control

for the following reason(s):

On 8/30/98 Inmate DeJarnette committed a Class II, Rule 19 involving assaults on an OCI Captain, Sergeant, and Correction Officer resulting in injuries to these staff. due to his conduct and his past RIB history, we are requesting a transfer to Administrative Control.

NATURE OF TRANSFER:

☐ Disciplinary ☐ Medical ☐ Will be/has been on transfer ticket
☒ Administrative ☐ Psychiatric ☐ Other

Warden's Signature:

/s/Alan J. Lazaroff Alan J. Lazaroff, Warden

DEPARTMENTAL ACTION

☒ Request approved in accordance with:

☐ Section 5120.14 R.C. ☐ Section 5120.16 R.C.
☐ Section 2967.20 R.C. ☐ Section 5143.09 R.C.
☐ A.R. 5120-9-21 ☐ Other: _____

☒ Request Denied.

OSP High Maximum Security

~~FT SOCF AC~~

Request Amended:

*TO SOUTHERN OHIO CORRECTIONAL FACILITY AC
*TRANSFER MODIFIED TO OHIO STATE PENITENTIARY (HIGH MAX SECUTRITY) ON 10/19/98 PER MARVIN NASH

By:
/s/Bernie Ryznar

DRC 2003 (REV 11/95)

Plaintiff's Exhibit DeJarnette-5
4:01cv071

RECEIVED
99APR-2 PM 1:59
(ILLEGIBLE)
SHERIFF
PICKAWAY COUNTY

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

FILED—COMM PLEAS

State of Ohio,

Plaintiff,

v.

James Dejarnette,

Case No. 98 CR 167
Judge Knece

99APR-2 AM 11:14
(ILLEGIBLE) K. CLINE
CLERK OF COURTS
PICKAWAY COUNTY

ENTRY OF VOLUNTARY DISMISSAL

This matter comes before the Court, *sua sponte*, on the 2nd day of April, 1999, upon the Motion of the Prosecuting Attorney to dismiss the above-captioned matter pursuant to Criminal Rule 48(A).

Pursuant to the Motion, and for good cause shown, the Court hereby grants leave to dismiss this matter, and the same is hereby ORDERED DISMISSED. The trial date currently set in this matter for Monday, April 5, 1999 is hereby VACATED.

It is the further ORDER of the Court that the costs be waived.

/s/P. Randall Knece
P. RANDALL KNECE, JUDGE
Date 4-2-99

Plaintiff's Exhibit DeJarnette-9
4:01cv071

Ohio Parole Board Decision

Name: James DeJarnette	Inmate No.: A275295		Date: 8/21/00
Hearing Type: Rehear	Security Level: HIGH MAX	Sentence: 3A1 3-15 YRS	MAX/EDS/EST: (circle one) 12 18-2010

1. The (offense) (parole violation) behavior has been rated as Category 7 because the offense behavior involved (Circle appropriate behavior):

12/21/92—Inmate & (2) Co-defendants robbed Super America at gunpoint. (Sawed off-12 guage shotgun—Upon arrest $52.00 & loaded weapon found in co-def car/Inmate found in poss. of $405.15.

Section No.(s): 321c

2. The Criminal History/Risk Score is 1.

3. The Guideline Range is 48-60 months.

4. Time served 88 mos. + JTC 4 mos = Total Time Served 92 mos. TPV Arrest Date: ---

5. Check if non-applicable ☒. The inmate has committed new felony criminal conduct in a prison facility that is rated as Category ~~1~~—because it involved: ~~8/30/98—Inmate assaulted Staff member at OCI (hit staff member in the face w/his hand)~~ Section No.(s): ~~213A~~

The Rescission Criminal History/Risk Score is **4**. (Considered at 6/99 (illegible))
This conduct requires ~~10-16~~ months to be added to the guideline range.

6. Check if non-applicable ☒.

A. The inmate has committed _____ disciplinary infractions involving non-felonious threatening conduct against staff and/or non-felonious possession of a dangerous instrument (6-12 months per infraction to be added to the guideline range) that occurred on the following dates:

_____

B. The inmate has committed _____ disciplinary infractions involving possession or use of alcohol and/or possession or use of a controlled substance other than possession of a controlled substance with intent to distribute (3-6 months per infraction to be added to the guideline range) that occurred on the following dates:

_____

C. The inmate has committed _____ disciplinary infractions involving other misdemeanor conduct (0-6 months per infraction to be added to the guideline range) that occurred on the following dates:

_____

D. The inmate has committed _____ other significant disciplinary infractions (0-2 months per infraction to be added to the guideline range) that occurred on the following dates:

_____

This conduct requires _____ months to be added to the guideline range.

Name:	Inmate No.:	Date:
JAMES DEJARNETTE	A275295	8/21/00

7. Check if non-applicable ☐. the aggregate guideline range is _____ months.

8. After review of all relevant factors and information presented:

☐ A. A decision outside the guidelines at this consideration is not warranted. Therefore, the Board's decision is within the applicable guideline range.

☒ B. Rescission guidelines were used to address rescission behavior since the last time setting hearing, and the aggregate guideline range is exceeded.

☐ C. A decision (Above/Higher) (Below/Lower) the guidelines is warranted because:

☐ (1) The inmate's offense behavior involved the following specific (aggravating) (mitigating) factors:

☐ (2) The inmate is a (poorer) (more serious) (better) risk than indicated by his/her criminal history score for the following specific reasons:

☐ (3) Other specific reasons:

List number of guideline ranges departed:
Vertical _____ Horizontal _____

List selected guideline range: _____ months.

Inmate serving 1st Adult Commitment—He is currently High Max Security—with next Security Screening 12/2000. He has served above the recommended range—However his Security Status prevents a release recommendation (illegible) (illegible) to get inmate to earliest appointment for reduction to close. (Project 4)

*Requiring 19 added mons to serve until next (illegible) eligibility.

9. Total time to be served 111 months.

10. Optional Outstanding Program Achievement
(Note: the granting or denying of such credit is discretionary.)

☐ granted ☒ not granted

The Board's decision includes a _____ month credit for outstanding program achievement as specified below:

---

11. Adjusted total time to be served _____ months.

12. Recommendation: Continue 3/2002

13. Institutional conditions prior to PRD or next hearing:

---

14. Hearing Panel:

Board Member: /s/(illegible)	Hearing Officer: /s/(illegible)

Release on PRD is contingent on good institution behavior and/or reduction from maximum security status. A PRD may be extended for a Class II violation

when the case is reviewed at the PRD Pre-Release Review.

DRC 3331 (7/99)

Plaintiff's Exhibit DeJarnette-11
4:01cv071

Ohio Department of Rehabilitation and Correction
High Maximum Security Classification Review

Name: DEJARNETTE, JAMES		Number: A275295
Lock: (illegible)	High Max Level: Level 3	Institution: OSP
Date of Current Placement: 10-21-98	Sending Institution: OCI	

Justification for High Maximum Security Classification: 09-02-98 RIB (illegible) (12, R19 (Assault) Hit a sergeant in the face. Assaulted a captain and officer.

Adjustment while in High Maximum Security Classification: Good adjustment—not a behavioral problem.

Inmate comments at time of hearing: Has done everything he could to drop his status.

High Maximum Security Classification Committee Action

- ☐ Retain in high Maximum Security Classification
- ☒ Recommend release from High Maximum Security Classification
- ☐ Other: _____

Justification for Action Taken

- ☐ Based upon this inmate's assaultive, predatory, or other dangerous conduct, he/she continues to require placement in a high max security classification.
- ☐ there is a likelihood that if released, the inmate would continue to demonstrate aggressive, disruptive and or predatory behavior.
- ☒ Based upon the inmate's adjustment while in high maximum security, inmate no longer represents department's highest level of threat to security and order, and is appropriate for security reduction.
- ☐ Other: _____

Comments: Good adjustment . Level III.

Date of Next Review:	
Warden's Designee's (Deputy Warden) Signature: /s/Carolyn Hennel	Date: 11/28/00
Warden's Designee's (Mental Health Professional) Signature: /s/(illegible)	Date: 11/28/00
North Regional Director's Designee's Signature: /s/Roberta W. Banks	Date: 11/28/00

Warden's Recommendation	Warden's Signature:	Date:
☐ Recommend Approval ☒ Recommend Denial	(illegible)	12-6-00

Comments: Serious assault—still represents the highest risk of threat to ODRC (illegible) Continue high maximum classification.

Chief, Bureau of Classification	Chief Signature:	Date:

Review

☐Recommend Approval
☒Recommend Denial

/s/Bernard Ryzner	12/19/00

Comments: Hit sgt. in face, (illegible), swollen eye to C/O from head butt and (illegible).

Regional Director's Approval Required for Releases

☐Release Approved
☒Release Denied

Regional Director Signature: /s/Stephen J. Huffman	Date: 12/20/00

Comments:_____

Plaintiff's Exhibit Gardner-1A
4:01cv071

SCIOTO COUNTY
OHIO
FILED

98 DEC –9 AM 8:33
(ILLEGIBLE)
CLERK OF COURTS

VERDICT—Single Form
Instruction 413.50

Court of Common Pleas, Scioto County, Ohio
December 8 Term, 1998

THE STATE OF OHIO

vs. No. 98-CR-182

KEITH GARDINER

Indictment For
POSSESSION OF A DEADLY WEAPON WHILE UNDER DETENTION

We, the Jury, find the Defendant ___* NOT GUILTY of Possession of a Deadly Weapon While Under Detention

Dated December 8, 1998.

1 /s/Patricia Schmidt
2 /s/Debra L. Smith
3 /s/Mary Taylor
4 /s/Jason Taylor
5 /s/Aaron Jackson
7 /s/David Zinker
8 /s/Robert Cooley
9 /s/Patricia Williams
10 /s/Jack D. Young
11 /s/Ruth Jarvis

6 /s/Christopher Gampp
*Insert In Ink: Guilty or
Not Guilty

12 Kim Donnally

Jack D. Young FOREMAN

Plaintiff's Exhibit Gardner-1B
4:01cv071

SCIOTO COUNTY
OHIO
FILED

(ILLEGIBLE) DEC. 11 AM 9:37
(ILLEGIBLE)
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS,
SCIOTO COUNTY, OHIO
GENERAL DIVISION

STATE OF OHIO — NO: 98-CR-182

Plaintiff JUDGE: HARCHA, III

vs.

KEITH GARDINER — CHARGE: Poss. Dead. Weapon

Defendant

JUDGMENT ENTRY

This day, December 7, 1998, came the Prosecuting Attorney on behalf of the State of Ohio, and the defendant, Keith Gardiner, in open court and with counsel. Also came the following named persons as jurors, to-wit:

1. Aaron Jackson
2. Kimberly Donnally
3. Debra Smith
4. Christopher Gampp
5. Jason Taylor
6. Ruth Jarvis
7. Robert Cooley
8. Patricia Schmidt
9. Mary E. Taylor
10. David Zinker
11. Patricia Williams
12. Jack Young

who were duly impaneled and sworn, and having heard the evidence presented, the arguements of counsel and the charge of the court, retired to their room to deliberate on the verdict. And afterward came the Jury and returned the following verdict concurred in by all the Jurors, to-wit: "We, the Jury, find the Defendant NOT GUILTY of Possession of a Deadly Weapon while under Detention."

Dated December 8, 1998.

1. Aaron Jackson
2. Kimberly Donnally
3. Debra Smith
4. Christopher Gampp
5. Jason Taylor
6. Ruth Jarvis
7. Robert Cooley
8. Patricia Schmidt
9. Mary E. Taylor
10. David Zinker
11. Patricia Williams
12. Jack Young

*Insert in Ink: Guilty or Not Guilty

This matter is dismissed.

Enter:

/s/Howard H. Harcha, III
JUDGE HOWARD H. HARCHA, III

/s/Lynn Alan Grimshaw
Lynn Alan Grimshaw (0032292)
Prosecuting Attorney

Michael Mearan
Attorney for the Defendant

Plaintiff's Exhibit Gardner-1C
4:01cv071

OSP RECORDS
DEC 30 1998
RECEIVED

The outcome of an outside court case has no bearing on an RIB hearing.

R. Millhouse
12-14-98

(illegible note at bottom)

Plaintiff's Exhibit Gardner-3
4:01cv071

Ohio Department of Rehabilitation and Correction
High Maximum Security Classification Review

Name: GARDINER, KEITH		Number: A149-278
Lock: B7-21	High Max Level: 2	Institution: OSP
Date of Current Placement: 11-21-98	Sending Institution: SOCF A/C VIA MANCI	

Justification ~~for High~~ Maximum Security Classification: Extorted inmate for Sex (95) stabbing of another inmate (served A/C time)

Adjustment while in High Maximum Security Classification: Good

Inmate comments at time of hearing: Did not commit an act to be sent to OSP

High Maximum Security Classification Committee Action

- ☐ Retain in high Maximum Security Classification
- ☒ Recommend release from High Maximum Security Classification
- ☐ Other: _____

Justification for Action Taken

- ☐ Based upon this inmate's assaultive, predatory, or other dangerous conduct, he/she continues to require placement in a high max security classification.
- ☐ there is a likelihood that if released, the inmate would continue to demonstrate aggressive, disruptive and or predatory behavior.
- ☒ Based upon the inmate's adjustment while in high maximum security, inmate no longer represents department's highest level of threat to security and order, and is appropriate for security reduction.
- ☐ Other: _____

Comments: Placement to OSP Questionable. No recent disciplinary after A/C release 1/98

Date of Next Review:	
Warden's Designee's (Deputy Warden) Signature: /s/David Bobby (illegible)	Date: 1-13-00
Warden's Designee's (Mental Health Professional) Signature: /s/(illegible)	Date: 1/13/00
North Regional Director's Designee's Signature: /s/(illegible)	Date: 1/13/00

Warden's Recommendation	Warden's Signature:	Date:
☒ Recommend Approval ☐ Recommend Denial	(illegible)	2-8-00

Comments: _____

Chief, Bureau of Classification	Chief Signature:	Date:

Review:

☐Recommend Approval
☒Recommend Denial

/s/Bernard Ryzner	2/23/00

Comments: BR 9/98 conspired to have another inmate bring drugs into (illegible) through visits (illegible). 1/12/97 fighting w/ weapons. Gardiner & 2nd inmate chased & stabbed 3rd inmate. 3rd inmate had lacerations to arm & neck. 9/88. Threatened inmate & told him he was going to have sex with him & (illegible).

Regional Director's Approval Required for Releases

☐Release Approved
☒Release Denied

Regional Director Signature: /s/(illegible)	Date: 3/2/00

Comments:_____

DRC 2595 (Rev 12/99)

Plaintiff's Exhibit Gardner-5
4:01cv071

SUPERVISION REVIEW FORM
DEPARTMENT OF REHABILITATION AND CORRECTION
STATE OF OHIO

Number: # 149-278
Name: Gardiner, Keith
Date of Birth: 2/18/58

Date of Review: 1/7/01
Reviewer: D. Jones
Institution: OSP

RACE:		SEX:		HISPANIC:	
White	☐	Male	☐	Yes	☐
Black	☐	Female	☐	No	☐
Other	☐				

Present Security Status:

Minimum Level 1	☐	Medium	☐	High Close	☐	High Maximum RSP Murder	☒
Minimum Level 2	☐	Close:	☐	Maximum	☐		

Date of Last Review: 1-11-00

Section IA	UNFAVORABLE BEHAVIOR	WEIGHT	SCORE
1.	FINDING BY RULES INFRACTION BOARD (since last review)		
	Not Heard by RIB/Found Not Guilty	0	0
	Found Guilty by RIB	2	
2.	ADMINISTRATIVE/LOCAL CONTROL PLACEMENTS (since last review)		
	None	0	0
	One or More	3	
3.	MOST RECENT VIOLENCE INDICATOR (last 5 years) (Includes pre-prison, current offense, institutional violence)		
	No Violence in Last 60 Months	0	
	Violent Conviction/Infraction Within Past 25-60 Months	1	1
	Violent Conviction/Infraction Within Past 24 Months	2	
4.	FREQUENCY OF GUILTY CLASS II DISCIPLINARY REPORTS (since last review)		
	None	0	0
	1 – 2	1	

3 – 5	2	
6 or More	3	
SECTION I A SUBTOTAL SCORE (Items 1 - 4)		1

Section I B	STABILITY FACTORS	WEIGHT	SCORE
5.	EDUCATIONAL ATTAINMENT (pre-prison and during incarceration)		
	High School Diploma/GED/Higher Education	-1	0
	Less Than High School Equivalency	0	
6.	INSTITUTIONAL JOB PERFORMANCE (since last review)		
	No Job Removal/Removed for Other Reasons	-1	-1
	Removed for Discipline (Including Non-Job Related Behavior) or Indication of Poor Job Performance	0	
7.	AGE AT THIS REVIEW		
	Age 40 or Older	-1	-1
	Age 39 or Younger	0	

SECTION I B SUBTOTAL SCORE (Items 5-7)	-2

TOTAL SCORE (Items 1-7) COMBINED SUBTOTALS:	-1

(-3- -1 points)	(0 – 4 points)	(5 – 10 points)
Consider Supervision Decrease	Consider Present Supervision	Consider Supervision Increase

DRC 2098 (REV 11/98)

SECTION II (Overrides and Recommendations)

Number:# 149-278
Name: Gardiner Keith
(last) (first)

1. Committee Options:

Score Indicates Considering Supervision Decrease (-3 - -1)	Score Indicates Considering Present Supervision (0 – 4)	Score Indicates Considering Supervision Increase (5 – 10)
a. Agree: Decrease One Level ☒	a. Agree: Continuation ☐	a. Agree: Increase One Level ☐
b. Disagree: Continue Present Level: ☐	b. Disagree: Decrease One Level ☐ Increase One Level ☐	b. Disagree: Continue Present Level ☐

2. Check (√) all the Special Management Concerns which Apply to this Inmate for Purposes of Overriding Scored Level:

Minimum Level 1
Non-Discretionary Overrides

- ☐ Sex Offender
- ☐ Kidnapping or abduction offense
- ☐ High notoriety case inmate

Discretionary Overrides

- ☐ Time left to serve
- ☐ Severity of current offense
- ☐ Extensive criminal history
- ☐ Good conduct
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____

Higher Custody
Discretionary Overrides

- ☐ Meets criteria for placement in high close
- ☐ Conduct or presence poses a serious threat to physical safety of any person, or security of prison.
- ☐ Nature of offense indicates inmate poses a serious threat to the physical safety of any person, or security of prison.
- ☐ Participated in, threatened to participate in or is encouraging a disturbance or riot.
- ☐ Conspired to introduce contraband which may pose serious threat to security.
- ☐ Functions as a leader or enforcer of a security threat group.
- ☐ Poses a serious threat of escape.

Minimum Level 2
Non-Discretionary Overrides

- ☐ Any felony for causing death of a law enforcement officer or another person while incarcerated.
- ☐ Convicted of any capital offense, including former death row inmates.
- ☐ Documented history of escape.
- ☐ Medium security inmate serving indefinite sentence for an F1 or F2 and has not had statutory first parole board hearing.

☐ Ability to compromise integrity of staff

3. Override of Review Score is Recommended: ☐ Yes ☒ No

If yes, give rationale (required): _____

_____

4. Recommended Placement (check appropriate box)

Minimum Level 1:	☐	Medium:	☐	High Close:	☐	High Maximum:	☐
Minimum Level 2:	☐	Close:	☐	Maximum:	☒		

Chairperson (Signature):	Date:
/s/Roberta M. Banks	01/09/01

5. Warden's Action: Approve: ☐ - Disapprove: ☒

6. Warden's Comments: Extensive history of assaults & predatory acts

Warden (Signature):	Date:
/s/(illegible)	1-24-01

DRC 2094 (REV 11/96)

SECTION II (Overrides and Recommendations) Continued

Number: # 149-278
Name: Gardiner Keith

8. Assignment Requires Transfer: Yes ☐ No ☐
Offense: _____

9. Mental Health Needs _____ Level: Yes ☐ No ☐
E.D.S./P.B.D./E.S.T.(Release Date)

10. Medical Needs _____ Level: Yes ☐ No ☐

---

11. Date of Next Review (month & year)
2/02

SECTION III (Bureau of Classification)

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13. Bureau of Classification Action: Approve: ☒ Disapprove: ☐

14. Final Placement (check appropriate box):

Minimum Level 1:	☐	Medium	☐	High Close:	☐	High Maximum	☒
Minimum Level 2:	☐	Close:	☐	Maximum:	☐		

15.

Institutional Placement:
OSP

16. Bureau of Classification Rationale (required): Seriousness of placement offense. Considered Highly dangerous. Stabbed another inmate.

17.

Date Assigned by Bureau of Classification:	Initials:
2/20/01	BR

DRC 2338 (REV 6/99)

Plaintiff's Exhibit Lane-1
4:01cv071

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED
94 JUL 28 AM 8:47
PAUL E. HARRISON
CLERK OF COURTS

VERDICT---Not Guilty

Court of Common Pleas, Warren County, Ohio

May Term, A.D. 1994

THE STATE OF OHIO

No. 94CR15948

vs.

Indictment for Murder

Stacy Lane

We, the Jury in this case, duly impaneled and sworn and affirmed, find the Defendant Stacy Lane not Guilty

Dated July 27, 1994

1. Phyliss Shubs
2. Sandra Smith
3. Thomas (illegible)
4. Alan V. Bone
5. Mary Ellen Buck
6. Roberta R. Thompson
7. Mary L Rapesino
8. Randall Poynte
9. Terry C. Dudley
10. Jean E. Trimer
11. Rick Ogg
12. Gary D. Moore

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED 230-299
94 AUG-2 AM 11:18
(ILLEGIBLE)
CLERK OF COURTS

STATE OF OHIO, WARREN COUNTY
COMMON PLEAS COURT

STATE OF OHIO,) CASE NO. 93CR15948
Plaintiff,)
)
vs.)
) ENTRY
STACY LANE,)
Defendant.)

This cause came on for Trial by Jury on the 25th, 26th, & 27th days of July, 1994. The Jury, having heard the evidence and arguments of counsel finds the Defendant, STACY LANE, NOT GUILTY.

It is therefore, CONSIDERED, ORDERED, and DECREED that Judgment be, and the same is hereby entered in favor of the Defendant.

Defendant is remanded to the custody of the Lebanon Correctional Institution to serve the remainder of his sentence on a prior conviction.

/s/Neal B. Brown
JUDGE, COMMON PLEAS COURT

Plaintiff's Exhibit Robb-12
4:01cv071

SEAL Ohio State Penitentiary Reclassification Panel
Security Reclassification

TO: Robb 308-919

DATE: 6/19/00

On 1/4/00 you appeared before the Security Classification Committee. At that time, you were recommended for a REDUCTION/RETAIN in security status. The Bureau of Classification in Columbus, Ohio has APPROVED/DENIED this request for the following reasons:

Poses greatest level of threat

Your next security Review is scheduled to take place on (approximately), 2/2001.

/s/Jremmick
Unit Management Administrator
Ohio Penitentiary

cc: Unit File
Inmate

Plaintiff's Exhibit Robb-14
4:01cv071

SEAL Ohio Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

Bob Taft, Governor www.drc.state.oh.us Reginald A. Wilkinson, Director

July 11, 2000

Jason Robb 308-919
Ohio State Penitentiary
878 Coitsville Hubbard Road
Youngstown OH 44505

Dear Mr. Robb:

Thank you for your recent letter of appeal to the decision that you be continued at high-maximum security at the Ohio State Penitentiary.

According to my records, you were seen by the Review Committee on 1-4-00. It was the recommendation of the committee that you be released from high-maximum security. The Bureau of Classification and this office denied that recommendation and retained you at high-maximum security.

The information you provided and your records have been reviewed in accordance with AR 5120-9-53 and DRC Policy 111-07. It is the decision of this writer that your retention at high-maximum security is affirmed. There is no further appeal available to you in this matter. You will be seen again by the review committee in the month of January 2001.

If you have any additional questions, please do not hesitate to contact this office.

Sincerely,

/s/Stephen J. Huffman
Stephen J. Huffman
North Regional Director

cc: Warden Dave Johnson
Bernard Ryznar
File

WARDEN
RECEIVED
JUL 17 '00
OFFICE

Plaintiff's Exhibit Roe-1
4:01cv071

CONTROL UNIT HEARING RECORD

Institution: S.O.C.F. Lock Assignment: K-4-70
Inmate Name: _____ Number: ____ Hearing Date ___
Official Making Referral: R.I.B. Date of Significant Rule Violation(s): 1-24-99

Prior ☒ L.C. ☐ A.C. Placements? Date(s): 5/98
Summary of the Inmates Statement: I do not wish to make a statement.

RECOMMENDATION:

- ☐ Return to General Population
- ☐ Place in Local Control – Inmate has demonstrated a chronic inability to adjust to the General Population.
- ☐ Place in Local Control – Inmate's presence in the general population is likely to seriously disrupt the orderly operation of the institution.
- ☒ Place in Administrative Control – Inmate is a serious threat to the security of the Institution.
- ☐ Refer to Bureau of Examination and Classification for other appropriate placement.

Reasons for the Recommendation: II-19 2903N3 assaulted inmate Roe 208-6-.. by hitting him in the head with a spatula. Inmate Roe did not fight back. Committee recommends A/C placement due to the seriousness of the assault with a weapon involved.

signature *illegible* signature *illegible* signature *illegible*
committee member committee member committee member
Decision of the Warden: ☐ approved ☒ disapproved

Comments: Recommend transfer to OSP for assaulting inmate.

signature *illegible* 2/3/9

UNTOO9479D
DRC2341 ACA4241

Plaintiff's Exhibit Roe-2
4:01cv071

SUPERVISION REVIEW FORM
DEPARTMENT OF REHABILITATION AND CORRECTION
STATE OF OHIO

Number: # 208-653
Name: Roe, Kevin
Date of Birth: 11/18/58

Date of Review: 1/22/99
Reviewer: J. Grant
Institution: SOCF

RACE:		SEX:		HISPANIC:	
White	☒	Male	☒	Yes	☐
Black	☐	Female	☐	No	☒
Other	☐				

Present Security Status:

Minimum Level 1	☐	Medium	☐	High Close	☐	High Maximum	☒
Minimum Level 2	☐	Close:	☐	Maximum	☒		

Date of Last Review: 7/98

Section IA	UNFAVORABLE BEHAVIOR	WEIGHT	SCORE
1.	FINDING BY RULES INFRACTION BOARD (since last review)		
	Not Heard by RIB/Found Not Guilty	0	0
	Found Guilty by RIB	2	
2.	ADMINISTRATIVE/LOCAL CONTROL PLACEMENTS (since last review)		
	None	0	0
	One or More	3	
3.	MOST RECENT VIOLENCE INDICATOR (last 5 years) (Includes pre-prison, current offense, institutional violence)		
	No Violence in Last 60 Months	0	
	Violent Conviction/Infraction Within Past 25-60 Months	1	1
	Violent Conviction/Infraction Within Past 24 Months	2	
4.	FREQUENCY OF GUILTY CLASS II DISCIPLINARY REPORTS (since last review)		
	None	0	0

1 – 2	1
3 – 5	2
6 or More	3

SECTION I A SUBTOTAL SCORE (Items 1 - 4) 1

Section I B STABILITY FACTORS	WEIGHT	SCORE
5. EDUCATIONAL ATTAINMENT (pre-prison and during incarceration)		
High School Diploma/GED/Higher Education	-1	0
Less Than High School Equivalency	0	
6. INSTITUTIONAL JOB PERFORMANCE (since last review)		
No Job Removal/Removed for Other Reasons	-1	-1
Removed for Discipline (Including Non-Job Related Behavior) or Indication of Poor Job Performance	0	
7. AGE AT THIS REVIEW		
Age 40 or Older	-1	-1

Age 39 or Younger	0

SECTION I B SUBTOTAL SCORE (Items 5-7) -2

TOTAL SCORE (Items 1-7) COMBINED SUBTOTALS: -1

(-3- -1 points)	(0 – 4 points)	(5 – 10 points)
Consider Supervision Decrease	Consider Present Supervision	Consider Supervision Increase

DRC 2098 (REV 11/98)

SECTION II (Overrides and Recommendations)

Number:# 208-653
Name: Roe Kevin
(last) (first)

1. Committee Options:

Score Indicates Considering Supervision Decrease (-3 - -1)	Score Indicates Considering Present Supervision (0 – 4)	Score Indicates Considering Supervision Increase (5 – 10)
a. Agree: Decrease One Level ☒	a. Agree: Continuation ☐	a. Agree: Increase One Level ☐
b. Disagree: Continue Present Level: ☐	b. Disagree: Decrease One Level ☐ Increase One Level ☒	b. Disagree: Continue

2. Check (√) all the Special Management Concerns which Apply to this Inmate for Purposes of Overriding Scored Level:

Minimum Level 1 Non-Discretionary Overrides

- ☐ Sex Offender
- ☐ Kidnapping or abduction offense
- ☐ High notoriety case inmate

Minimum Level 2 Non-Discretionary Overrides

- ☐ Any felony for causing death of a law enforcement officer or another person while incarcerated.
- ☐ Convicted of any capital offense, including former death row inmates.
- ☐ Documented history of escape.

Discretionary Overrides

- ☐ Time left to serve
- ☐ Severity of current offense
- ☐ Extensive criminal history
- ☐ Good conduct
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____

Higher Custody Discretionary Overrides

- ☒ Meets criteria for placement in high ~~close~~
- ☐ Conduct or presence poses a serious threat to physical safety of any person, or security of prison.
- ☐ Nature of offense indicates inmate poses a serious threat to the physical safety of any person, or security of prison.
- ☒ Participated in, threatened to participate in or is encouraging a disturbance or riot.
- ☐ Conspired to introduce contraband which may pose serious threat to

☐ Medium security inmate serving indefinite sentence for an F1 or F2 and has not had statutory first parole board hearing.

security.
☒ Functions as a leader or enforcer of a security threat group.
☐ Poses a serious threat of escape.
☐ Ability to compromise integrity of staff

---

3. Override of Review Score is Recommended: ☒ Yes ☒ No

If yes, give rationale (required): Long standing member of the (REDACTED?) Participated in a racial disturbance over 5 years ago

---

4. Recommended Placement (check appropriate box)

Minimum Level 1:	☐	Medium:	☐	High Close:	☐	High Maximum:	☐
Minimum Level 2:	☐	Close:	☐	Maximum:	☒		

Chairperson (Signature): /s/ (illegible)	Date:1/21/99

5. Warden's Action: Approve: ☐ Disapprove: ☒

6. Warden's Comments: Extensive history of assaults & predatory acts

Warden (Signature):	Date:
/s/ Stephen J. Huffman	1-25-99

DRC 2094 (REV 11/96)

SECTION II (Overrides and Recommendations) Continued

Number: # 208-653
Name: Roe, Kevin

8. Assignment Requires Transfer: Yes ☐ No ☐

9. Mental Health Needs _____ Level: Yes ☐ No ☐

10. Medical Needs _____ Level: Yes ☐ No ☐

Offense: _____

11. Date of Next Review (month & year)
2/2000

SECTION III (Bureau of Classification)

13. Bureau of Classification Action: Approve: ☒ Disapprove: ☐

14. Final Placement (check appropriate box):

Minimum Level 1:	☐	Medium	☐	High Close:	☐
High Maximum		☒			
Minimum Level 2:	☐	Close:	☐	Maximum:	☐

15.

Institutional Placement:
OSP

16. Bureau of Classification Rationale (required): Meets criteria for High Max placement.

17.

Date Assigned by Bureau of Classification:	Initials:
2/2/99	B/R

DRC 2338 (REV 11/98)

Plaintiff's Exhibit Roe-6
4:01cv071

Ohio Department of Rehabilitation and Correction
High Maximum Security Classification Review

Name: ROE, KEVIN		Number: A208-653
Lock: C7-21	High Max Level: 2	Institution: OSP
Date of Current Placement: 2/10/99		Sending Institution: SOCF-MAX

Justification for High Maximum Security Classification: (illegible) were running gambling tickets. Was (Leoto) involved in (illegible) fights, and disturbances

Adjustment while in High Maximum Security Classification: _____

Inmate comments at time of hearing: _____

High Maximum Security Classification Committee Action

☐ Retain in high Maximum Security Classification
☒ Recommend release from High Maximum Security Classification
☐ Other: _____

Justification for Action Taken

☐ Based upon this inmate's assaultive, predatory, or other dangerous conduct, he/she continues to require placement in a high max security classification.

☐ there is a likelihood that if released, the inmate would continue to demonstrate aggressive, disruptive and or predatory behavior.
☒ Based upon the inmate's adjustment while in high maximum security, inmate no longer represents department's highest level of theat to security and order, and is appropriate for security reduction.
Was sent to OSP from General Pop. 2 months after incidents
☒ Other: Was not involved in incident in library.

Comments: Only involvement—He was hit with a spadula in chow hall. It appears he was assigned to OSP based on History in 97—only 4 tickets during incarceration—No assaults or violence.

Date of Next Review:	
Warden's Designee's (Deputy Warden) Signature: /s/(illegible)	Date: 4/6/00
Warden's Designee's (Mental Health Professional) Signature: /s/(illegible)	Date: 4/6/00
North Regional Director's Designee's Signature: /s/(illegible)	Date: 4/6/00

Warden's Recommendation	Warden's Signature:	Date:
☒Recommend Approval ☐Recommend Denial	(illegible)	4-12-00

Comments: _____

Chief, Bureau of Classification Review

☐ Recommend Approval
☒ Recommend Denial

Chief Signature:	Date:
/s/Bernard Ryzner	5/1/00

Comments: Inmates STG activity directly led to assaults, fights and disturbance at SOCF

Regional Director's Approval Required for Releases

☐ Release Approved
☒ Release Denied

Regional Director Signature:	Date:
/s/Terry Collins	5/8/2000

Comments:

DRC2595 (Rev 12/99)

Plaintiff's Exhibit Roe-10
4:01cv071

Ohio Department of Rehabilitation and Correction
High Maximum Security Classification Review

Name: ROE, KEVIN		Number: A208-653
Lock: C7-21	High Max Level: Level 3	Institution: OSP
Date of Current Placement: 02-10-99		Sending Institution: SOCF

Justification for High Maximum Security Classification: ID as leader MAB who along with (redacted) was running gambling tickets. Was involved in gang assaults, fights and disturbances.

Adjustment while in High Maximum Security Classification: Good –Level 3

Inmate comments at time of hearing: (illegible) gang affiliation (but says he is finished with that stuff. Does not like OSP. Last ticket in 1997.

High Maximum Security Classification Committee Action

☐ Retain in high Maximum Security Classification
☒ Recommend release from High Maximum Security Classification
☐ Other: _____

Justification for Action Taken

- ☐ Based upon this inmate's assaultive, predatory, or other dangerous conduct, he/she continues to require placement in a high max security classification.
- ☐ There is a likelihood that if released, the inmate would continue to demonstrate aggressive, disruptive and or predatory behavior.
- ☒ Based upon the inmate's adjustment while in high maximum security, inmate no longer represents department's highest level of threat to security and order, and is appropriate for security reduction.
- ☐ Other: _____

Comments: Overall good adjustment. Involved in programming. Has remained ticket free. Level 3.

Date of Next Review: 2/02	
Warden's Designee's (Deputy Warden) Signature: /s/David Bobby (illegible)	Date: 2-6-01
Warden's Designee's (Mental Health Professional) Signature: /s/(illegible)	Date: 2/6/01
North Regional Director's Designee's Signature: /s/Roberta W. Banks	Date: 2/6/01

Warden's Recommendation	Warden's Signature:	Date:
☒Recommend Approval ☐Recommend Denial	(illegible)	2-23-01

Comments: (illegible)

Chief, Bureau of Classification Review	Chief Signature:	Date:
☐Recommend Approval ☒Recommend Denial	/s/Bernard Ryznar	3/6/01

Comments: Recommend continue high max. Involved in conduct that resulted in disturbances at SOCF

Regional Director's Approval Required for Releases

☐Release Approved ☒Release Denied	Regional Director Signature: /s/Stephen J. Huffman	Date: 3/6/01

Comments:

DRC2595 (Rev 12/99)

Plaintiff's Exhibit Thompson-4
4:01cv071

Ohio Department of Rehabilitation and Correction
High Maximum Security Classification Review

Name: Thompson, Lahray		Number: A337-139
Lock D4-28	High Max Level: 2	Institution: OSP
Date of Current Placement: 1/21/99		Sending Institution: SOCF - Max

Justification for High Maximum Security Classification:
"CRIP" capt. identified as being involved in gang assaults, fights and disturbances @SOCF

Adjustment while in High Maximum Security Classification:
Good at OSP

Inmate comments at time of hearing: Claims he is not a gang member and was not involved in a fight; has never been written up for gang activity. Denies his nickname is "Little Capone."

High Maximum Security Classification Committee Action
☐ Retain in High Maximum Security Classification ☒ Recommend release from High Maximum Security Classification

☐ Other action: _____

Justification for Action Taken
☐ Based upon this inmate's assaultive, predatory, or other dangerous conduct, he/she continues to require placement in a high max security classification.

☐ There is a likelihood that if released, the inmate would continue to demonstrate aggressive, disruptive and or predatory behavior.
☐ Based upon the inmate's adjustment while in high maximum security, inmate no longer represents department's highest level of threat to security and order, and is appropriate for security reduction.
☒ Other: Ticket does not specify who he was fighting—(very general) Inmate does not have any gang related tickets or any fighting or assault Tickets

Comments: In his record- it appears he has been mixed up w/ Inmate Capone 293-8 who is Id'ed as Crip Leader.

Date of Next Review:	
Warden's Designee's (Deputy Warden) Signature: // signature *illegible* //	Date: 2-21-00
Warden's Designee's (Mental Health Professional) Signature://signature *illegible* //	Date: 2/29/00
Warden's Designee's (Director's Designee's) Signature:// signature *illegible* //	Date: 2/29/00

Warden's Recommendation
☒ Recommend Approval ☐ Recommend Denial

Warden's Signature: //signature *illegible* Date: 4/3/00

Comments: _____

Chief, Bureau of Classification Review
☐ Recommend Approval ☒ Recommend Denial

Chief Signature: //signature *illegible*	Date: *// illegible*

Comments: Crip leader involved in assaults on AB members at SOCF during gang fights assaults and disturbances at SOCF resulting in institution lockdown.

Regional Director's Approval Required for Releases
☐ Release Approved ☒ Release Denied

Regional Director Signature: //signature *illegible* Date: 4/5/00

Comments: _____

DRC 2595 (Rev 12/99)

Plaintiff's Exhibit Thompson-6
4:01cv071

Ohio Department of Rehabilitation and Correction
High Maximum Security Classification Review

Name: Thompson, Lahray		Number: 337-139
Lock D1-27	High Max Level: level 3	Institution: OSP
Date of Current Placement: 1-21099		Sending Institution: SOCF - Max

Justification for High Maximum Security Classification:
Identified as Crip Capt. as being involved in gang assaults, fights, disturbances at S.O.C.F. No II 31 tickets. However 8-12-97 #7-tested positive for marijuana. No fight tickets.

Adjustment while in High Maximum Security Classification:
Excellent-level 3.

Inmate comments at time of hearing: Inmate states he is not a gang member.

High Maximum Security Classification Committee Action
☐ Retain in High Maximum Security Classification
☒ Recommend release from High Maximum Security Classification
☐ Other action: _____

Justification for Action Taken
☐ Based upon this inmate's assaultive, predatory, or other dangerous conduct, he/she continues to require placement in a high max security classification.

☐ There is a likelihood that if released, the inmate would continue to demonstrate aggressive, disruptive and or predatory behavior.

☐ Based upon the inmate's adjustment while in high maximum security, inmate no longer represents department's highest level of threat to security and order, and is appropriate for security reduction.

☐ Other: _____

Comments: Adjustment has been good. Ticket free. Unable to *illegible* "gang-related" information.

Date of Next Review: 2/02	
Warden's Designee's (Deputy Warden) Signature: // signature *illegible* //	Date: 2-5-01
Warden's Designee's (Mental Health Professional) Signature: // signature *illegible* //	Date: 2/5/01
Warden's Designee's (Director's Designee's) Signature: // signature *illegible* //	Date: 2/5/01

Warden's Recommendation

☐ Recommend Approval ☒ Recommend Denial

Warden's Signature: //signature illegible Date: 2-23-01

Comments: Identified STG leader - //remaining comments *illegible*//

Chief, Bureau of Classification Review

☒ Recommend Approval ☐ Recommend Denial

Chief Signature: //signature *illegible* Date: 3/14/01

Comments: Recommend reduction; level 3 and good adjustment

Regional Director's Approval Required for Releases

☐ Release Approved ☒ Release Denied

Regional Director Signature: //signature *illegible*// Date: 3/19/01

Comments: _____

DRC 4018 (03/98)

Plaintiff's Exhibit Thompson-7
4:01cv071

CONDUCT REPORT

Institution: Ohio State Penitentiary		
Name: 337-139	Lock: D-Block	Work Assignment: Idle
Rule(s) violation: 1	Class: II	Rule(s): 31 Engaging in unauthorized activates as set forth in 5120-9-3
Class	Rule(s):	

Supporting Facts (Use reverse side if necessary): On the above date while processing incoming mail, the undersigned observed a letter authored by inmate Thompson 337-139 going to (redacted) . The envelope was opened and searched for contraband. The undersigned after careful observ.... noticed that inmate Thompson 337-139 crossed or drew a line through several letter Bs. This action is commonly done by gang members to show disrespect to other rival gangs. In this case Thompson is an identified Crip member and is disrespecting the Bloods. His actions are in direct violation of 5120-9-37 Section B Subsection 2-C. Notice of withholding correspondence sent to both parties.

Note: original letter is secured in the STG office

Inmate Attitude (at time of offense): N/A

Days Off: 5/5	Shift: 1st	Signature of Reporting Officer: M. Wylie

Administrative Review Officer

☒ Concurs ☐ Altered ☐ Withdrawn

Comments: _____

Signature, Administrative Review Officer: *signature illegible*	Date: 3/23/01

copy of this ticket was served upon the above-named inmate on 3/23/01, 2001, at 1300 ~~am~~/pm.

UNTO11208

Inmate Signature: *x* Thompson 337 139	Number:

DRC 4018 (03/98)

Plaintiff's Exhibit Tolliver-9
4:01cv071

9/20/01 0L0POO9A
14:10:17 PAGE#: 5

CASE HISTORY LISTING

Case #/Name: 00CR18762 TOLLIVER, KEVIN
Caption: STATE OF OHIO – VS – TOLLIVER, KEVIN

KEVIN D TOLLIVER
60401 DEMAND FOR DISCOVERY FILE (39)
60801 MOTION & ENTRY TO APPROVE COUNSEL FEES FILED (40)
61301 ORDER TO CONVEY (COPY SENT TO LCI BY PROS OFFICE (41)
61301 PRECIPES FILED & SUBPOENAS ISSUED TO SHER WARREN, HAMILTON & MONT
62001 4 PRECIPE RETD & FILED RESIDENCE SERVICE-SHER WARREN CO.
62001 2 PRECIPE RETD & FILED RESIDENCE SERVICE-SHER WARREN CO
62601 PRECIPE RETD & FILED RESIDENCE SERVICE-SHER HAMILTON CO.
62701 NOTICE OF HEARING ISSUED
KEVIN W. ATTKISSON
KEVIN TOLLIVER
KENNETH A EWING
PROBATION DEPT
KEVIN D TOLLIVER
062701 9:45 AM PRETRIAL HEARING
62901 ENTRY FILED (42)
62901 PRECIPE RETD & FILED-NOT SERVED-SHER WARREN CO.

70201 PRECIPE RETD & FILED PERSONAL SERVICE-SHER WARREN CO.
70201 4 PRECIPE RETD & FILED PERSONAL SERVICE-SHER WARREN CO.
70301 2 PRECIPE RETD & FILED RESIDENCE SERVICE-SHER WARREN CO.
70301 3 PRECIPE RETD & FILED RESIDENCE SERVICE-SHER WARREN CO
70301 PRECIPE RETD & FILED RESIDENCE SERVICE-SHER WARREN CO
71701 PRECIPE RETD & FILED RESIDENCE SERVICE-SHER HAMILTON CO
73101 (9) ORDERS FILED-COPIES TO SHERIFF (42)
80201 ORDER FILED (43)
30301 LABELS ONLY
KEVIN W ATTKISSON
81401 PRECIPE RETD & FILED-NOT SERVED-SHER WARREN CO
082401 08:45 AM
CONFERENCE *
082701 09:00 AM THREE DAY JURY TRIAL
82801 VERDICT NOT GUILTY-ASSAULT CT 1 (354-412) (44)
82801 VERDICT NOT GUILTY –ASSAULT CT 2 (354-408) (45)
82801 VERDICT NOT GUILTY –ASSAULT CT 3 (354-410) (46)
082801 09:00 AM THREE DAY JURY TRIAL
82901 ENTRY FILED-DEF FOUND NOT GUILTY (354-497) (47)
082901 09:00 AM THREE DAY JURY TRIAL
90501 MOTION & ENTRY TO APPROVE COUNSEL FEES FILED (48)
90601 MOTION FILED (COPY RET'D TO DEF) (49)
90601 LABELS ONLY
KEVIN TOLLIVER

91001 MEMORANDUM IN OPPOSITION TO
DEFENDANTS MOTION (50)
91301 NOTICE OF HEARING ISSUED
KENNETH A EWING
PROBATION DEPT
KEVIN D TOLLIVER

Plaintiff's Exhibit Tolliver-4
4:01cv071

OHIO DEPARTMENT OF REHABILITATION
AND CORRECTION
SEAL
1050
Freeway Drive North
Columbus, Ohio 43229

Bob Taft, Governor Reginald A. Wilkinson, Director
www.drc.state.oh.us

May 05, 2000

TOLLIVER, KEVIN A370-500
LEBANON CORRECTIONAL INSTITUTION

Dear Inmate TOLLIVER, KEVIN:

I received your appeal on 4/12/00 requesting a review of the decision of the Rules Infraction Board on 3/30/00.

A careful review of the procedural records was conducted by my legal staff. Please be advised that:

(1) You were validly charged with the proper rule infraction.
(2) There was no prejudicial violation of procedural rights under the rules of the Administrative Code.
(3) There was some factual evidence in the record to support the decision.
(4) The penalty assessed was authorized or appropriate.

Therefore, your appeal must be denied.

Sincerely,

/s/ Reginald A. Wilkinson
REGINALD A. WILKINSON
Director
cc: Warden
RIB File

AFFIDAVIT OF MATTHEW MEYER

State of Ohio :
: ss.
County of Franklin :

Now comes Matthew Meyer, having been first duly sworn, and states and affirms as follows:

* * *

10. It is also important to note that good behavior while at OSP is not necessarily a reliable predictor of good conduct once an inmate is reduced to security level 4. There have been a number of instances where inmates with clean records at OSP engaged in very disruptive behavior soon after they were reduced to security level 5. For example inmate Randy Coleman, R148-976, was transferred to OSP because he was a leader of the Aryan Brotherhood STG. He was transferred from OSP to SOCF in December of 2001 because of, among other things, the fact that he behave himself while at OSP. However, in April of 2002, less than six months later, he was involved in a very serious assault on inmate Kevin Roe, 208-653 that Roe and others have stated was tied into Roe's involvement with the Aryan Brotherhood. That assault resulted in serious injury to Roe Coleman's role in that assault was verified by Roe himself.

11. Another example of the reality that good behavior at OSP does not predict good behavior in a less restrictive institutions is found in inmate John Perotti 167-712. He was transferred to OSP because of an incident related to substance abuse. He was reduced to security level 5 because of *inter alia*, his good behavior while at OSP. However, after returning to SOCF he was proven to have

been involved in a significant drug smuggling efforts following his release from OSP. See exhibit A hereto.

12. The Disputed Orders will also interfere with ODRC's ability to prevent third party violence directly related to level 5 inmates but not attributable to specific acts of misconduct by those inmates. For example, certain prominent STG leaders will, by virtue of their status as such, attract violent actions from other inmates who are either members of rival STG's or rivals within the leader's STG. That will have adverse effects on persons other than the STG leader. Assault on one STG member will often trigger reprisals against members of the STG the assailant is associated with, including members who were not involved in the initial assault. Further, staff will be required to intervene in any such assaults, putting them at risk of physical injury or death. The only way to avoid that violence is to keep the STG leader confined to level 5, but the Disputed Orders prohibit that result absent additional misconduct on his behalf while in level 5.

13. The problem described in paragraph 12 above is not hypothetical but was recently illustrated by event concerning one member of the Plaintiff class in *Austin*. Inmate Kevin Roe, 208-653, was placed at OSP because of his involvement in the Aryan Brotherhood STG. He was reduced to security level 5 and transferred to SOCF. Shortly after he arrived at SOCF he was the target of a very serious, coordinated assault by a number of inmates affiliated with the Arya Brotherhood. That assault was related to Roe's previous involvement with the Aryan Brotherhood, as Roe himself has acknowledged.

* * *

Further affiant sayeth naught.

/s/ MATTHEW MEYER

Sworn to before me and subscribed in my presence this 3 day of June, 2002.

/s/ Brigitte Puckett
NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHARLES E. AUSTIN, et al.,

Plaintiffs,

vs. Civil Action No.
4:01CV071

REGINALD WILKINSON, et al.,

Defendants.

DEPOSITION of REGINALD WILKINSON

Taken at the offices of
Department of Rehabilitation
and Correction
1050 Freeway Drive, North
Columbus, Ohio 43229

on October 22, 2001, at 10:05 a.m.

Reported by: Sara S. Cox, RPR/CRR

APPEARANCES:

Staughton and Alice Lynd
ATTORNEYS-AT-LAW
1694 Timbers Court
(330) 652-9635
on behalf of the Plaintiffs
Joseph Mancini and
Carol Hamilton O'Brien
ASSISTANT ATTORNEYS GENERAL
Corrections Litigation Section
140 East Town Street, 14th Floor
Columbus, Ohio 43215
(614) 644-7233
and
Gregory C. Trout
OHIO DEPARTMENT OF REHABILITATION
AND CORRECTION
1050 Freeway Drive, North
Columbus, Ohio 43229
(614) 752-1773

on behalf of the Defendants

ALSO PRESENT:
Stephen J. Huffman
Bernard Ryznar

STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of REGINALD WILKINSON, the Defendant herein, called by the Plaintiffs under the applicable Rules of Civil Procedure, may be taken at this time by the notary by agreement of counsel; that said deposition may be reduced to writing in stenotypy by the notary, whose notes thereafter may be transcribed out of the presence of the witness; and that the proof of the official character and qualification of the notary is waived.

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BY MR. LYND: 6

INDEX OF EXHIBITS

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Exhibit 6 14
4-9-98 article from The Vindicator

Exhibit 10 15
Administrative Rule 5120-9-12

Exhibit 8 21
4-9-98 news release

Exhibit 4 22
4-10-98 article from The Columbus Dispatch

Exhibit 9 23
4-10-98 article from The Cleveland Plain Dealer

Exhibit 12 31
ODRC internal management audit dated August 18-20, 1998

Exhibit 13 36
1998 ACA accreditation report

Exhibit 14 44
ODRC internal management audit report, 2001

Exhibit 15 47
December, 1998 final report of the OSP quality review team

Exhibit 18 ..... 71, 83

ODRC draft policy re: Level 4/Level 5 classification for male inmates

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particular persons is that they make it concrete for all of us.

Plaintiffs' Exhibit 32 appears to be a letter from the hearing officer of the Ohio Parole Board, directed to Jerome Lennon, also known as Quinta Quenata. And in the third paragraph of this letter, it says, "The parole board has not paroled any inmates from maximum security status since shortly after the 1993 riot per the director of DR&C."

Do you see that sentence?

A. Yes.

Q. Is there, Mr. Wilkinson, some policy that you initiated at some point in time to the effect that a person cannot be paroled from maximum security status?

A. It was my direction to the Ohio Parole Board to pursue not paroling persons from a maximum security status, which they ultimately incorporated in their guidelines for release.

Q. Is it fair to say that this is an existing policy and practice of the

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department?

A. Yes.

Q. And if it's inappropriate to parole a person from maximum security status, it would be as much or even more

inappropriate, would it not, to parole a person from high maximum security status?

MR. MANCINI: Objection.

Would you repeat the question? I am not following this. Would you repeat the question?

(Record read back as requested.)

MR. LYND: I can simplify the question, especially because it was meant to be inappropriate.

MR. MANCINI: Go ahead.

MR. LYND: Let me just ask.

BY MR. LYND:

Q. Is it also the policy and practice of the department not to parole a person on high maximum security status?

A. I've never directed the parole board to not parole someone from a high maximum security status. I presume they're deciding

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that maximum security and high maximum security status should at least be considered the same.

Q. Would you agree, Mr. Wilkinson, that the practical effect of that policy is that a prisoner at the Ohio State Penitentiary must work his way down to close security before he has an opportunity to be paroled?

A. If the parole board includes high maximum as a part of the process of not paroling maximum security inmates, then that's correct. They need to earn their way to a more—to a lower status.

Q. And are you aware that there are persons who have been told by the parole authority, we're ready to parole you right now, but we can't do it because of your security status?

A. No.

Q. Supposing that were the case, what would your attitude be?

A. I'm not capable of responding to a hypothetical situation.

Q. Okay. Well, let me give you one

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which is not hypothetical.

Plaintiffs' Exhibit 33 consists of four pages concerning Mr. DeJarnette. And I'm going to ask my co-counsel's help in interpreting.

MR. MANCINI: Take a look at that.

A. You can ask your question.

Q. Mr. Wilkinson, are you familiar with the concept of a guideline?

MR. MANCINI: You mean parole guidelines; is that what you're saying?

MR. LYND: Yes.

Q. Are you familiar with that concept?

A. I am familiar with that concept.

Q. Can you explain it as you understand it?

A. I cannot give you the specific details of the parole guidelines—

Q. Just your impression.

A. a—other than the fact that the Ohio Parole Board has, at their disposal, some general guidelines that allow them to make informed decisions for release of persons eligible to be for statutory parole board

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hearing.

Q. And would it be an approximately correct paraphrase to say that the guideline gives the parole board orientation as to how long they might expect a person to be actually incarcerated for a specific kind of offense?

A. There are some general guidelines that suggest length of time, but the parole board can certainly deviate from those guidelines.

Q. I understand.

Now, let me direct you to the middle of the first page of Plaintiffs' Exhibit 33, which appears to represent that the guideline in this specific case is 48 to 60 months, and the

time served to the date of this document, last year, is 92 months, correct?

A. That's correct.

Q. Now, let's turn the page to Page 2. And there is a handwritten paragraph here, difficult to read, entered, it would appear, by parole authority personnel. And let me

[Page 102]

read aloud what I see in these words.

"Inmate serving first adult commitment. He is currently high max security with next security screening 12, 2000. He has served above the recommended range; however, his security status prevents a release recommendation. Time assigned—

MRS. LYND: Assessed.

Q. —assessed to get inmate to earliest opportunity for reduction to close."

And then there's a note that they've added, "19 additional months to serve until his next eligibility day."

MR. MANCINI: What is your question?

MR. LYND: I'm about to ask it.

BY MR. LYND:

Q. Would it appear to you—I understand you're not familiar with Mr. DeJarnette—that here we have a prisoner whose guideline range is 48 to 60 months, who has actually served 92 months and has just been assessed an additional 19 months by the parole authority so that that

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prisoner can lower his security classification?

MR. MANCINI: What—

A. The question is?

MR. MANCINI: What's your question?

Q. Would you agree with me that that is the stated facts which this document appears to present?

A. Sure. Those are the facts as they are described by the person representing the parole board.

Q. I understand. That's all I mean. That's all I mean, Mr. Wilkinson.

A. Sure. But—

Q. Now, my reason for asking, to say it one more time, is this: Is there, from your point of view, a problem if a person whom the parole authority might be ready to release is kept in confinement for months, and, indeed, years, beyond that projected release date because of his security status?

A. I don't read that the same way you're reading it. You're reading it as if this inmate was not in a maximum security

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status, that the parole board would automatically release him. The parole board guidelines say that it's above the

recommended range. The parole board, probably on a regular basis, keep people above the recommended range who are not in a maximum security status. So it does not reasonably follow that because they are above a time in their recommended range and they're at a maximum security level that they're going to be released, even by the parole board's guidelines.

Q. From the point of view of the department, which you head, Mr. Wilkinson, is classification in maximum or high maximum security status an absolute bar to release by the parole board?

A. The parole board has used the maximum security status as one that will not be eligible for parole. I don't know what they're doing with respect to the high maximum security status. At the present time, the parole board does not release anyone on a parole release who are in—

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who's in a maximum security status.

Q. And you understand, I hope, that the reason I'm pursuing this with you is that the parole board represented to Mr. Lennon—and I think you agreed that it adopted this policy to begin with because of a directive from you.

A. Well, it was a recommendation from me in consultation with a multitude of other staff.

Q. And since you have at least some part in the creation of this policy, what I'm trying to ask you, not about any particular case, but as a general matter, does it concern you that someone whom the parole board might—might be

ready to release, in fact, keeps that person confined for a matter of years because of this policy that you initiated?

A. And I'm saying to you that the parole board keep certain people who are not in maximum security status and who has time well above the range on the parole board guidelines, so it doesn't logically follow

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to me that the parole board would release anybody from custody of this department because their range has maxed out and because they're in maximum security.

Q. You would agree, of course, that when a person maxes out, they can go from high maximum security to the street, correct?

A. That's correct.

Q. Suppose the parole board were to say in the case of a particular prisoner, we think you're ready for release, and even though you're in high maximum security, we're going to release you. What would your attitude be?

A. Well, I—

MR. MANCINI: Go ahead.

A. —I've not heard the parole board say that. They certainly will not say that to me. And the parole board has to take in consideration the other factors that contribute to an orderly operation of this prison system, as well as making sure that we maintain all possible ways of

[Page 107]

effectuating public safety.

Q. Do you consider that you have the authority to override, to veto, a specific decision of the parole board?

A. I do not override a decision of the parole board.

Q. So hypothetically, at least, if the parole board were to decide to release someone in high maximum security status, there would be nothing you could do about it?

A. I said I don't do it; I didn't say I couldn't.

Q. Well, what could you do?

A. Well, I could ask the parole board to reconsider their decision.

MR. LYND: It's about 8 minutes of 1:00. I'd like, if I might, to take those 8 minutes as a very short break, with the expectation that when we reconvene, we'll almost immediately conclude.

MR. MANCINI: Okay.

MR. LYND: Is that okay?

MR. MANCINI: That's fine.

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MR. LYND: Thanks.

(Break taken.)

MR. LYND: We have no further questions.

MR. MANCINI: That's it?

MR. LYND: Yes.

MR. MANCINI: Thank you very much.

(Court reporter instructs witness as to signature.)

THE WITNESS: I want to be able to correct any typographical—

MR. MANCINI: We'll read.

Thereupon, the testimony of October 22, 2001, was concluded at 1:03 p.m.

TRANSCRIPT OF PROCEEDINGS HAD BEFORE

THE HONORABLE JAMES S. GWIN,

JUDGE OF SAID COURT,

ON MONDAY, JANUARY 7TH, 2002.

- - - - -

VOLUME 1

- - - - -

APPEARANCES:

For the Plaintiffs:	**Staughton Lynd, Esq.**
	Alice Lynd, Esq.
	Jules L. Lobel, Esq.
	Raymond V. Vasvari, Jr., Esq.
	Terry H. Gilbert, Esq.
For the Defendants:	**Mark Landes, Esq.**
	Jeffrey A. Stankunas, Esq.
	Joseph Mancini, Esq.
	Carol H. O'Brien, Esq.

Official Court Reporter: Susan K. Trischan, RMR, CRR
U.S. District Court - Room 568
2 South Main Street
Akron, Ohio 44308-1811
330/374-9335
Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

TESTIMONY OF JAMIE FELLNER

[66] prison or in the free society, are entitled to respect for their basic human dignity.

And extrapolated from that is another corollary which is in law, in treaties which the United States has signed and which we believe are binding on State officials as well as federal officials, is that no inmate should be subjected to cruel, inhuman or degrading treatment, much less torture.

One of the corollaries of this is that you shouldn't be subjected to treatment that is unnecessarily or pointlessly harsh. And that's a very difficult concept, and I fully recognize the challenge for correctional officials of balancing the need to respect the dignity of all inmates and meet their obligations to provide a safe and secure environment.

And as a human rights activist, advocate and researcher, I would be the first to say it is also the obligation of correction officials to provide safe environments because inmates have a right to a safe, secure, humane environment.

So I'm very well-aware of the difficult challenge they face.

Nevertheless, in the case of supermaxes, many supermaxes', including Ohio, attention to the needs of the individual and the basic dignity of the individual have [67] been overlooked in the quest for absolute security.

Q. You mentioned—

MR. LANDES: Excuse me.

May I move to strike the statement that she believes that international law is binding on this Court?

THE COURT: You know, that's a legal conclusion and that's something I'm not going to give any weight to, so it can be argued in a brief if the plaintiffs take a position it is applicable somehow, but it's not controlling upon the Court.

MR. LOBEL: Your Honor, this is—

THE COURT: Just go ahead and ask a question.

MR. LOBEL: Okay.

BY MR. LOBEL:

Q. You mentioned that subsequent to your visit, you understand there have been a number of changes at OSP.

If I were to tell you that one of the changes were that subsequent to your visit, metal strips were placed along the bottom, top and side of the door so that there is no opening any more, there's no opening on the bottom or the side or the top of that door, could you tell me in your opinion what effect that would have on these conditions in light of your

testimony on cruel and degrading, unnecessarily degrading treatment?

A. You know, one of the worst things about super-maximum

* * *

[77] Is that a basic principle held generally by correctional officials in the United States, in your experience?

A. I actually think, yes, in my experience they wouldn't use "human rights principles" because that's not a language they tend to use, but if you look at how classification systems are set up and what corrections officials try to do, they try to place inmates, if only for cost reasons, and if nothing else, and maybe for rehabilitation reasons, in the least restrictive environment.

Q. Does that principle in your opinion affect how long prisoners ought to be held in supermax confinement?

A. Absolutely. If, if there are good reasons for putting an inmate into super-maximum security confinement, they should only be kept under those restrictions for as long as absolutely necessary.

When the reasons that precipitated that placement no longer exist, they should be removed.

Q. And in your experience, do most supermax prisons maintain some kind of criteria, objective criteria, to allow people to earn their way out of supermax prison—of that prison?

A. It is certainly, I think, the common practice among supermaxes that even if the term is officially indefinite, that inmates be told that if they comply with certain [78] behavioral expectations, that are usually quite formalized and meet various hurdles, behavioral hurdles, that they will at least be eligible to be released, and in some cases there is the presumption that they will be released.

Those systems vary from Connecticut where inmates, if they comply with the behavior program, would be out in 18 months; Colorado where the program was, I think, a little bit over three years if they again do everything they are supposed to; to some facilities where it's indefinite and inmates have no idea what they have to do to get out or if they ever will get out.

Q. Back to Exhibit Number 11, the last sentence in that paragraph which the CIIC quoted from your report, you say "Given the importance of the decision to place someone in the extreme conditions of supermax confinement, it is critical that adequate safeguards exist to ensure that it is made carefully and fairly."

In your opinion, what constitutes the critical adequate safeguards in this supermax context?

MR. LANDES: Objection.

THE COURT: I don't understand the question. You will need to rephrase it.

Q. In your report, what did you mean by "adequate safeguards" in the context of supermax confinement?

A. All classification decisions, including the decision

* * *

[88] homicide is committed, that they could be considered appropriate for placement.

But just because somebody commits a murder out on the streets doesn't mean that they need super-maximum security confinement. In fact, generally they are not placed in super-maximum security confinement.

Q. Okay. Let's say a murderer in prison, would you concede that that's serious, is violent and disruptive?

A. It is certainly violent and disruptive. Again, whether or not it warrants supermax placement depends on the context in which the homicide occurs. I think you need to look at the inmate's entire profile.

If it was an inmate who was being prayed upon by others, who was being subjected to many rapes and who finally decided he had enough and he lashed out, that may or may not warrant supermax placement.

Q. What I asked was is murder violent?

A. Murder is violent.

Q. Okay.

A. Self-defense can be violent, too.

Q. Is stabbing and fighting, is that violent?

A. Yes.

Q. Is conveying drugs into the prison seriously disruptive?

A. Yes.

* * *

[96] MR. LOBEL: I just only have a few questions.

REDIRECT EXAMINATION OF JAMIE FELLNER

BY MR. LOBEL:

Q. Ms. Fellner, Mr. Landes read you a list of violent or disruptive activities and asked whether people who committed these types of offenses could be considered for supermax placement.

The question I have for you, are there many people who engage in those very activities that he mentioned who are not placed in supermax?

A. Yes.

Q. And—

A. And again it depends on—when I say yes, I can't speak specifically with regard to Ohio, though I have heard from people that there are people who have committed the same conduct who are on both sides of the supermax walls, but I know from nationwide that there is a great range of behavior that can lead you to supermax depending in part on the philosophy and approach of each, you know, jurisdiction.

Q. And Mr. Landes asked you about whether you favor—your report which said that high level officials should review periodically—

A. Yes.

Q. —these placements.

• • •

[97] Do you think these high level officials should review these placements on some criteria or should they review it based on some criteria?

A. I think the review needs to be based on, to the extent possible, on objective criteria as well as as much information as is possible that can be obtained about the individual from people who know the individual, the individual's history.

Predictions are very difficult and predictions of future behavior are very difficult, but you can't keep someone just indefinitely because the prediction is difficult, which is one of the reasons we argue for the need for some kind of independent or impartial hearing or scrutiny, so that if there are good reasons why an individual should be kept in supermax, those would be articulated.

But if it's just a kind of, "Well, he did this crime ten years ago, and, gee, well, let's just keep him here," that's not good enough.

Q. And Mr. Landes discussed your report in which you said that supermax—treaties, U.S. treaties are not self-executing, human rights treaties.

To your knowledge, have Courts ever held and ever cited these treaties, U.S. Courts, as evidence of what the contemporary standards ought to be?

• • •

TESTIMONY OF PETER DAVIS

[100] characteristics, and what you heard is that the characteristics that you saw at Ohio State Penitentiary this morning are in fact typical of supermax prisons.

But you also heard there were some complaints that I think are fairly tied to discretion. It ought to be discretionary for Warden Ishee to decide whether corrections officers and inmates walking by are subject to having urine thrown on them.

And that was a weighty point.

Thank you.

THE COURT: Thank you.

Would the plaintiff call your next witness?

MR. VASVARI: Peter Davis, Your Honor.

PETER DAVIS, of lawful age, a witness called by the Plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF PETER DAVIS

BY MR. VASVARI:

Q. Sir, good afternoon. My name is Raymond Vasvari, I'm one of the attorneys for the plaintiffs.

Could you do us the favor, please, of stating your name for the record?

THE COURT: And please spell your last name.

THE WITNESS: Peter Davis, D-A-V-I-S.

[101] Q. And, Mr. Davis, are you employed?

A. I am.

Q. How are you employed, sir?

A. I'm a member of the Ohio parole board.

Q. And how long have you been so employed?

A. Since September of this year—excuse me, September of 2001.

Q. And prior to that, were you also employed?

A. Yes.

Q. In what position, sir?

A. As executive director of the Correctional Institution Inspection Committee of the Ohio General Assembly.

Q. And for how long did you hold that position?

A. Twenty-three years.

Q. You referred to the correctional inspection or Correctional Institution Inspection Committee, correct?

A. Correct.

Q. For purposes of expedience, I'm going to call that the Committee for the rest of my questions, okay?

A. All right.

Q. Thank you.

Could you explain to us first when you became the executive director of the Committee?

A. August, 1978.

Q. And what were your responsibilities in that position?

[102] A. Executive director for the Committee.

Q. And what did the executive director do?

A. Supervise the staff; direct, counsel and advise the legislative members who comprised the Committee.

Q. How many legislative members comprised the Committee?

A. Eight.

Q. And what was the distribution between the houses and parties?

A. Four members from the House, two Republican and two Democrat; four members from the Senate, two Republican and two Democrat.

Q. And just so we are clear, the Committee was a creature, an organ of the Ohio General Assembly, correct?

A. Correct, a statutory committee of the Ohio General Assembly.

Q. You had a staff when you were the executive director?

A. Correct.

Q. And how many people were on your staff, sir?

A. At the time I left there were seven.

Q. And when you began?

A. At the time I began there were four.

Q. Thank you, sir.

What was the mandate of the Committee? What was its function vis-a-vis the General Assembly?

A. The Committee was statutorily charged to inspect all [103] Ohio correctional institutions, to monitor the inmate grievance procedure, and to assist the Department of Corrections in making improvements to conditions, operations and programs.

Q. When you say statutorily charged, the Committee isn't sent from institution to institution by the legislature on a per case basis, but rather exists constantly and is constantly monitoring and investigating institutions?

A. That's correct. The Committee would go to institutions to fill the statutory responsibilities as the

Committee so desired, at whatever pace, whatever frequency and whatever schedule it so chose to set.

Q. What role did you play as executive director in setting the agenda of the staff with respect to these investigations and monitoring procedures?

MR. LANDES: Objection. I believe the testimony was inspections other than investigations.

MR. VASVARI: Inspections, I stand corrected, Your Honor.

A. Pretty much 100% as it came to scheduling staff to do what we would call an on site visit.

Q. Would an inspection always involve an on site visit?

A. No. If I could, we use the term inspection to include a visit to an institution where there was at least one legislative member present on that visit.

[104] Most of the time, a lot of the visits to the institutions were conducted by me or staff without a legislator being there. And those instances we referred to that visit as an on site visit. That's really the only distinction between an inspection visit versus an on site visit.

If it says inspection, that means a regulator was there.

Q. Okay. And an inspection visit has a legislator along?

A. At least one.

Q. At least one.

Did it come to pass at some point, Mr. Davis, that the Committee investigated or conducted an inspection of the Ohio State Penitentiary?

A. That's correct.

Q. Okay. Was that subject to an investigation or an inspection visit or an on site visit?

A. It was considered an inspection visit.

Q. And which legislator was in attendance that made it so?

A. Senator Robert Hagan.

Q. Was there one visit, sir?

A. There was one visit with Senator Hagan.

There had been a prior visit with Senator Ron [105] McLynd and then Representative Mark Mallory.

Q. So those would both be inspection visits?

A. Correct.

Q. When did those take place?

A. The inspection visits that included Representative Mallory and Senator McLynd would have been April of '99, I believe, or April of '98. April of '99.

And the inspection visit with Senator Hagan would have been November of '99.

Q. Were those visits preparatory to the preparation of a report by the Committee?

A. No.

Q. Did the Committee issue a report with respect to OSP that relied, at least in part, on information collected during those visits?

A. The Committee did not.

I issued a report to the Committee.

Q. I understand.

So the staff through you as its executive director issued your report to the Committee?

A. Correct.

Q. Was this fairly common practice in your capacity as executive director, to issue reports to the legislators who comprised the Committee?

A. Yes.

[106] Q. Okay. So this was the ordinary way in which you did things—

A. Yes.

Q. —as the ED?

Okay. Would you refer now in that large blue binder, Mr. Davis, to a document at Tab Number 11? And that's Arabic 11.

We've put it up on the screen here.

A. Okay.

Q. Is the report that you authored and issued to the Committee in connection with the Ohio State Penitentiary the same report that comprises Plaintiff's Exhibit 11 here?

A. Yes.

Q. Okay. Were you the sole author of this report?

A. Yes.

Q. And again, you did testify that you drew, at least in part, upon information you gathered during your inspection visits in drafting the report?

A. That's right.

Q. You also relied on another document which had been drafted by another group prior to the preparation of this report, in preparing this report, did you not?

A. Yes.

Q. I would direct your attention now one tab back to Plaintiff's Exhibit 10, and ask if the document displayed [107] there and now on your screen is the document upon which you relied?

A. Yes.

Q. And what is, for the purposes of the record, sir, Plaintiff's Exhibit 10?

A. It's the report of the quality review team which was the special committee of senior staff within the Department of Rehabilitation and Corrections that was tasked with looking at operations and conditions at the OSP.

Q. As the executive director of the Committee, would you have been familiar with the composition and the working of the quality review team?

A. I had not prior to receipt of that report.

Q. How did it come to pass, sir, that you received this report?

A. I received it in the context of a host of what I called advance materials that were assembled by the department in preparation for what turned out to be the inspection visit with Senator Hagan and Ms. Fellner.

Q. Were these materials that you requested on behalf of the Committee?

A. I did not.

These were materials which Ms. Fellner and/or Senator Hagan had requested the department to provide prior to Ms. Fellner's visit.

[108] I worked with Senator Hagan, with counsel for the department, with Director Wilkinson in trying to be the

facilitator of the gathering of a host of information prior to that scheduled visit.

Q. And so again, all of the materials that we are discussing here in Exhibit 10 were, to the best of your knowledge, compiled by and provided by the Department of Corrections itself?

A. Yes.

Q. Okay. Sir, I'd like to direct your attention now to numbered Page 2 of that exhibit, and we will put that up on the screen for your convenience as well.

Is it fair to say, sir, in preparing your own report, that is to say Exhibit Number 11, that you relied at least in part upon the materials displayed here on Page 2?

A. Yes.

Q. And forgive me, the copy that I have is fairly marked up.

Is it also fair to say that the quality team report was concerned, among other issues, with the placement of inmates to OSP?

[109] A. Yes.

Q. And also the level progression system by which inmates were given their security classifications while at OSP?

A. Yes.

Q. And also the retention of inmates at the high maximum status at OSP?

A. Yes.

Q. Okay. And in writing your own report with respect to the Committee or to the Committee, writing your report to the Committee with respect to those issues, you relied upon the conclusions of this DRC report at least in part, did you not?

A. I cited them. I cited portions of them, of that quality team's report in my report.

Q. Did you consider the portions you cited to be accurate?

A. I didn't judge their accuracy.

I judged the fact that they were saying—they were expressing similar concerns to what I had.

Q. So the concerns that were expressed in this report may have formed part of the basis for your concerns, and you would have arrived at those same concerns with or without this report?

A. It was very interesting to me, when I read the quality team report, to see that a number of senior officials in the Department of Corrections who were [110] reviewing some of these very same issues that I was looking at, shared a lot of the same viewpoint that I was feeling at the time.

And, therefore, I decided to quote portions of their report in my report to my legislative members.

Q. I see. Sir, I'm going to try my best to be technical and highlight a paragraph.

Oh, I've succeeded and Mr. Gilbert has made it go away, but I need this paragraph here, "when asked about the inmate population."

Do you see that report, sir?

A. Yes.

Q. Okay. When you read that paragraph, which indicates the business about the worst of the worst and the concept of being difficult to operationalize especially when going beyond 200 inmates who are, quote, clearly OSP material, close quote, was that conclusion contained as it is in the quality team report consistent with your own findings after the inspection visits that you conducted in 1999?

A. Yes.

Q. Okay. I'm going to go down to the next paragraph now and I'm going to ask you to read to yourself the paragraph that begins with "Further clouding the issue is the question of the fundamental purpose of OSP."

Do you see that?

[111] A. Yes.

Q. Was this conclusion that there was some ambiguity with respect to the fundamental purpose of OSP, consistent with your own conclusions after the inspection visits which you conducted in 1999?

A. I hadn't formalized a conclusion in my mind as to whether or not that was true.

I noted that it was very interesting that they had concluded that.

Q. And that was material you felt that it was relevant to pass on to the legislators themselves?

A. Yes.

Q. On the next page, Page 3, in boldface of the quality team report, there is a recommendation that the mission of the Ohio State Penitentiary be decided by a policy group at the highest level of the department in as much as a mission definition will drive programs and so forth.

This section here, Mr. Davis, is what I'm referring to.

A. Yes.

Q. When drafting your report, did you concur with this recommendation of the quality team report?

A. I didn't specifically cite that paragraph, I don't believe, or make specific reference to it, but I think in other places in my report I came close to that by stating [112] my concerns that it certainly will take high level decision-makers within the department to answer the concerns that, not only that I had, but that the quality team had also raised in terms of this clearing up the blending or overlapping in terms of the definitions as to who qualifies or merits placement either in administrative control versus high max versus high close versus maximum.

Q. And those concerns are on Page 2 of the quality report, in fact one of the paragraphs that you later cited in your own report, are they not?

A. Yes.

Q. That there was some sort of conceptual ambiguity between high max and general population and maximum, close, AC and maximum, and that these all tend to blend together, correct?

A. Correct.

Q. And that's what you were just referring to?

A. Yes.

Q. Thank you, sir.

Okay. I'd like to turn now to what may be the more familiar territory of your own report, Exhibit 11.

And direct your attention initially, if I could, direct your attention, please, to the fifth page in, and so this page here. And it may just be quicker if I put up my notes?

[113] MR. VASVARI: They have some highlighting on them, Your Honor.

Is that okay?

THE COURT: It's—either way. It's easier sometimes for him to follow where you are talking.

MR. GILBERT: I can do it.

MR. VASVARI: Let's do it from here.

THE COURT: It's underlined there, it's not a problem, as long as there is not just writing on them.

MR. VASVARI: Okay.

Q. On Page 5 of the exhibit, Mr. Davis, which is on your screen now—

A. Yes.

Q —is it fair to say that your inspection visits, the Committee's inspection visits and your report were also concerned with supermax placement, the level review system and retention?

A. That's correct.

Q. Okay. And that's expressed here on Page 5 of the report.

You make reference on Page 6 of the report at the bottom of the page and on the top of Page 7 to the quality team report again, do you not?

A. Yes.

Q. And, in fact, you make a reference to the fact that [114] the staff of the Committee regard many of the issues raised in the quality team report to still be ripe and salient, is that right?

A. That's right.

Q. At the time which issues did you still consider to be ripe and salient for review?

A. Primary issue, as to what specific kinds of assaultive or disruptive behavior would warrant classification to high max.

Q. And here you quote at length again from the quality team report.

May I ask why it is that you selected this particular language for the long block quote which is underlined in light blue?

A. Because it reflected so much of my own viewpoint that I had for a number of months prior to this, so in one regard it was somewhat reassuring to me that persons high ranking within the department who I know and whose opinion I hold in high regard happened to also see the same concern that I had long had about that very same issue.

So in composing my report to my legislative members, wherever I could offer not only my viewpoint but if it could be supplemented by offering them a comparable viewpoint by high ranking officials from the department to further highlight the issue of concern, then I felt it [115] should be brought to the attention of my members.

Q. Just for the sake of chronology, it's true, Mr. Davis, quality team report was issued in December, 1998, correct?

A. I—I trust that date is correct. I—

Q. And your own report was issued in November, 1999, in fact, November 20th, nearly a year later?

A. That's when my report was issued, right.

Q. Is it fair to say from your highlighting the concerns that you have in your report with respect to placement, the ambiguity of mission with respect to OSP, some of the concerns about retention, that in your opinion as you expressed it to the Committee, the concerns that were raised initially in December of 1998 had been substantially unresolved by November, late November of 1999?

A. As to those issues, that would be correct.

Q. Okay. I want to take you in a bit of a different direction before we return to the OSP now.

In your capacity as the executive director of the Committee, were you familiar with the Southern Ohio Correctional Facility at Lucasville?

A. Yes.

Q. In fact, is it not true, was it not true, sir, that a substantial portion of the Committee's attention was actually spent on addressing constituent and inmate [116] concerns that came from Lucasville?

A. That's right.

Q. There was a riot in Lucasville in 1993, correct?

A. Correct.

Q. And you as an adjunct or a man who reported to legislators who had a particular concern with corrections were privy, I imagine, to some measure of legislative or

policy discussions around the decision to build a supermax prison in Ohio, is that correct?

A. Yes.

Q. Did you form an opinion as to whether or not, sir, the riot at Lucasville played any role in motivating the decision to build a supermax penitentiary?

A. Yes. It's my opinion, was then and it is now, that the riot at Lucasville weighed in very heavily in the minds of legislators in deciding to build a supermax prison.

Q. There was a time, was there not, Mr. Davis, when the Lucasville was home to all of the maximum security beds in the state, is that true?

A. That's still true.

Q. There was a period when it wasn't true, is that not correct?

A. Correct.

Q. So it was true for a while, and then it wasn't true, and then it was true again, I think is how it worked, [117] right?

A. That would be correct.

Q. So there's a window wherein there were maximum security beds both at Lucasville and Mansfield, and then it was just Lucasville again?

A. Correct.

Q. When did that happen, the second part, when it went back to being just Lucasville?

A. 1992, I believe.

Q.And at that time, then, there would have been—the State's prison system, for purposes of background, is divided into a north and a south region, correct?

A. That's right.

Q. And after the moving of all of the maximum security beds down to Lucasville, there would have been no maximum security beds in the north region, right?

A. That's right.

Q. All right. After the Lucasville riot—maybe before, too, but it really doesn't concern us—there was a pod or a wing, a section of the SOCF called J-1, correct?

A. Yes.

Q. What was J-1? What is J-1?

A. J-1 is a self-contained cell block area of 20 cells located in the J block configuration of SOCF.

There are additional cell block [118] configurations as a part of that J complex as well, J-1, J-2, J-3 and J-4.

J-1 is the most restrictive cell block within the entire Lucasville penitentiary. And at the time, of course, was the most restrictive and isolated cell block in the Ohio prison system.

It was commonly referred to as J-1 supermax.

Q. And was that designation based in some way, sir, upon its similarity to supermax lockdowns in other facilities in other states?

A. It took that name J-1 supermax prior to really the proliferation of supermax prisons in other jurisdictions that had considered it a prison within a prison or jail within a jail.

Q. Demonstrably higher security than even other high security prisons in SOCF?

A. Tighter access, much more restricted, limited—limited personal possessions, limited movement in and out of cell.

Q. Reserved, I imagine, for the worst of the worst of the inmate population, then?

A. Yes, frequently—that term has been frequently used in the past two decades to describe—to describe that, to house the worst of the worst.

Q. Twenty cells on J-1 you testified, yes, sir?

[119] A. Yes, I believe it's ten on the lower range and ten on the higher range, but they are back-to-back. Five back-to-back at the bottom; five more back-to-back on the upper range.

Q. And in your professional capacity as executive director for the Committee's staff, did you have personal knowledge with respect to the utilization of those cells; that is to say, the degree to which they were utilized?

A. Periodically.

Q. Okay. I'd like you to focus now on the period between 1993 after the Lucasville riot, prior to May of 1998 when OSP opened.

During that time, was J-1 ever fully utilized? Were all 20 cells ever used?

A. Not to my knowledge, it was not.

Q. Is it fair to say that during the majority of that time, J-1 was less than half full most of the time?

A. Yes.

Q. Let's go back to your report, now, if we can, which is Exhibit 11.

I'd like to move forward, if I can, to the ninth page which is displayed here on the screen toward the bottom.

At the end of this paragraph where I've marked in red, you cite the quality review team report for [120] the proposition that the 200 or so inmates who are clearly OSP material being quoted as a phrase or raised as a concept in the quality team report lead you to question whether there was an ongoing genuine sustaining need for 500 supermax beds in this state, is that correct?

A. Yes.

Q. Tell me, sir, why it is that you came to that conclusion?

A. Partially because during the period of time from immediately after the riot until the time that OSP opened, and as we have just talked about in terms of the utilization of the J-1 supermax beds not being fully utilized, but the greater concern for me and why I wanted to stress that with the members of the Committee was that one—and again, if you keep in mind, my report was crafted for my legislative members not knowing to what extent the Committee of legislators were going to want to further engage this issue, the overall issue of concerns regarding Ohio's supermax prison, the complains and concerns that inmates had written about, the concerns of Ms. Fellner that her visit had raised, the concerns of the department.

My hope was to try to frame a report that would embrace those issues that I felt were most critical for the members to be aware of, and in a proper context.

[121] And the most important aspect of that for me in helping to frame the issue was that the legislature should not try to address the issue of the State's supermax prison without understanding the context for the continuing need for additional maximum security beds for the system.

In other words, the decision in 1992, pre-riot which lead to the return of all of the maximum security inmates from the Mansfield institution back to Lucasville, therefore leaving Lucasville once again as the only maximum security prison, that problem or that shortage of maximum security beds became a problem then.

Our committee as a committee at the time cited that return of maximum security inmates back to Lucasville as one of the contributing factors to the riot. And here we are at that time by 1999, the State still didn't have enough maximum security beds.

So I did not want the members of my committee to begin discussing, if they so chose, how to resolve these issues related to the State's supermax prison without them feeling a legitimate need and concern to embrace the preceding issue which had still never been resolved of the lack of maximum security beds in the northern half of the state as well.

So the two can't be divorced in my view, at least in the context of trying to help frame a legislative [122] response, if there was going to be one.

But you can't talk about the issues, concerns, problems, what to fix, what not to fix, what to leave alone at OSP without understanding the proper historical context of what else is helping to drive some of that problem related to those issues at OSP.

And in that regard, the lack of additional maximum security beds was the most critical issue and problem, in my view.

Q. Now, Mr. Davis, when you qualify your answer in that way, I am assuming that as a man who for 26 years reported to a bipartisan, bicameral commission, that you felt a professional obligation to put the whole set of facts before your legislators when you issued this report, is that fair?

A. That's fair.

Q. Did you conclude, Mr. Davis, and in fact is it not included in your report, the conclusion that the lack of adequate maximum security beds in the northern region of the state provided strong institutional incentives to classify

inmates who are otherwise not to be classified at high max as high max?

A. I personally didn't conclude that.

I think I worded it such that—I think the words I said were "some may say," "some could say," "some [123] presume," "some may presume" that that may be a motivation on the part of department officials to keep that 500 facility supermax prison full.

I didn't cite it as my finding or my conclusion. In fact, I took pains to make sure in drafting this report that I didn't make findings or recommendations to the legislature.

Q. I'm going to direct your attention, not to disagree with you, but just to clarify what it is you said, Mr. Davis, to Page 10 of your report and the second full paragraph which I'm highlighting now.

A. All right.

Q. In green this time.

Is it fair to say based on that paragraph, sir, that you concluded that at least there is a strong institutional temptation to abuse the classification process as a means of justifying the continued existence of 500 high max beds in the state?

A. Well, again, as I started that last sentence of that paragraph, some would argue that it's easier and more expedient to make those kinds of case by case justifications than to justify—I'm simply pointing out to the members of my committee that this kind of argument, this kind of

accusation against a department is ripe for someone to make. A lot of folk already feel that way.

[124] But I think I word it—worded it carefully enough so that the members wouldn't necessarily conclude that that was my view.

I'm not a shy person. If when I want to make findings and recommendations to my members about issues and concerns relating to Ohio's prison system, I've never been shy about doing that. And I have publications and reports and praecipes that clearly don't show my shyness.

So I don't hesitate to state my clear point of view, if that's my point of view.

But I felt obliged to let them know this is an argument that's going to leave the department open for a lot of criticism from a lot of corners because politically some could argue, "Well, of course, they've got to keep that 500 bed prison filled and they will keep that filled."

And people will make that argument and the legislators need to know people will be making that kind of argument.

Q. So this is by way of fully informing them of what the public policy questions are?

A. Again trying to frame the issues as best I can and in as full a context as I can presenting, hopefully, an objective both sides of the argument and issue to write the report. Hopefully I did that.

Q. You just testified, Mr. Davis, that you are not a [125] shrinking violet, and I think we have in the paragraph above the one I just highlighted evidence of that very fact.

You write that serious questions remain with respect to the selection of inmates who are designated to be sent to the supermax.

Was that your conclusion in November of 1999?

A. Yes.

Q. And is it not true and do you not also conclude, if we go up a paragraph more, that the system, when you reviewed it, was such that there were inmates in the supermax who were there for pretty egregious conduct, but by the same token there were other inmates elsewhere in the system who were guilty of similar rules infractions but didn't get sent to the supermax?

A. That's correct.

Q. Was that a serious problem, in your mind?

A. It was a serious problem just in terms of trying to understand the application, the fair and objective application of the criteria, and to try to dispel or have a better understanding as to what appeared to be disparate treatment.

Q. In your mind, Mr. Davis, were the criteria objective and objectively applied at the time you wrote your report?

A. You'll note that I didn't make that conclusion one [126] way or the other in my report.

Q. I'm asking you, sir, to make it now, with all due respect.

A. It's difficult to say.

The only thing that's clear is, as I've said here, for every inmate that was cited to me and the reasons why that person was sent there, for this particular act, this assaultive behavior, if you will, we knew for a fact of plenty other inmates that were at other institutions, even close security institutions, that were not transferred there.

My frustration was trying to understand how the criteria was being applied, whether or not it was being applied consistently at all institutions on referral, whether or not it was being applied consistently at central office level in those determinations.

Just simply was no way to understand how one assaultive inmate could get high max placement and other assaultive inmates could not.

My frustration was one in search of clarity.

Q. So truth be told, Mr. Davis, you did, in fact, conclude that the criteria weren't being objectively applied given this disparate treatment, is that not true?

A. They certainly weren't being consistently applied.

MR. VASVARI: Thank you.

[127] THE COURT: Let me ask a question myself.

You testified that there were too many or insufficient number of maximum security cells and perhaps too many high maximum security cells.

Is that still the situation today or has it changed?

THE WITNESS: It's—the situation in my view, Your Honor, is still the same.

THE COURT: Too many high maximum security cells and too few maximum security cells?

THE WITNESS: Your Honor, I'll stop short of whether there are too many high max beds.

I—I don't have a basis to know whether or not 200 or 500 supermax beds are needed.

I think I have a stronger opinion that a lot more maximum security beds are needed, similar to what used to be the case before those beds were lost at Mansfield.

THE COURT: And how many are you talking about? How many were lost at Mansfield or how many do you think are needed now?

THE WITNESS: What was that number?

There were at least 500 maximum security beds, I believe, at Mansfield. At the time Mansfield was housing a dual population; part of the population was maximum security, part was close security.

[128] And I believe there was close to 500 beds total that were designated for Mansfield to help alleviate some of the problem at Lucasville.

THE COURT: 500 maximum security beds?

THE WITNESS: 500 maximum security beds, I believe that was the—that was the number.

THE COURT: Do you have any other questions?

MR. VASVARI: Not many, Your Honor. Maybe five minutes. I was hoping you might give me 15 seconds to confer with co-counsel before I go on.

THE COURT: Okay.

MR. VASVARI: Thanks.

(Pause).

MR. VASVARI: Your Honor, my guess is less than five minutes.

THE COURT: Go ahead and ask your questions.

MR. VASVARI: Thank you.

BY MR. VASVARI:

Q. You also concerned yourself in the report you drafted in 1999, Mr. Davis, with exit criteria from supermax, did you not?

A. Yes.

Q. And did you conclude in that report that there was a sense that the level progression system through which inmates had to work in order to ultimately earn their

* * *

[133] I'm just going to wrap up now by asking, you said until September 10th of last year you were the executive director for the Committee staff, correct?

A. I began my new position with the parole board September 10th of 2001.

Q. Okay. So when did you complete your tenure as the ED?

A. June 30th.

Q. Okay.

A. 2001.

Q. So early summer, 2001.

Did you remain aware, did you keep up to speed with issues and concerns about the OSP until you left that position?

A. Yes. Periodically, of course, we would try to do as best we could with all 30—I think by that time 33 prisons.

Q. When you left, were the concerns that you had about initial placement at the OSP resolved to your satisfaction, satisfactorily addressed by the Department of Corrections, or did those issues remain outstanding?

A. I couldn't say that they were thoroughly resolved to my satisfaction, but that's, one, because it wasn't as

pressing a high profile priority issue for my staff, for me and my staff by that time.

[134] Q. But fair to say, if we were to take a snapshot at that time—I'm not trying to trick you up. I don't want to make you say what you don't want to say.

A. Yeah.

Q. But if you looked at it on June 30th, 2001, the concerns that were raised in your November 20th, 1999 report vis-a-vis placement, those concerns were still there?

A. I can't say definitively.

I can say that by June 30th, by the time I left, I had certainly stopped hearing from a number of inmates at OSP who had originally been saying "I don't even know why I'm here. No, I haven't had a hearing, no one's told me what I did to get"—those kind of complaints had dissipated.

But I think your focused question is whether or not I knew or felt or believed that the department, through its efforts, had somehow reached a clearer distinction between the various classifications and divisions; in other words, what kind of behavior can get someone in administrative control versus local control versus high max versus max.

I wouldn't say that—that I had any assurance that those blended categories had been—had been made more distinct than they had.

[135] Q. Just one or two more questions, Mr. Davis.

The same question with respect to your attention to level progression.

Do you feel that those issues had been satisfactorily resolved by the department by the time you left?

A. Again I don't know. The level of involvement with me on that institution beginning in the year 2000 was much more minimal.

Whether or not, again, the department had made significant improvements to that exit or level progression system and how an inmate flows through that or can earn his way through that process, the number of inmate letters to my office through the year 2000 as well as the focus of my office on OSP during the year 2000 was diminished.

So it wasn't like by the time I left I was able to do as focused a follow-up study to compare it with my 1999 belief.

Q. Do you have any reason to believe, any specific information that would lead you to conclude that things had substantially improved?

A. Oh, I had heard certainly throughout the year 2000 and into early 2001 that a number of operational changes had occurred there.

[136] That there had been some added privileges or added video programming that was allowed, that they had—

Q. If you'll excuse me, if I can just for one second, Mr. Davis, those changes you are describing deal with the conditions of confinement but not with the issues of retention and placement?

A. Right. Again as to placement, I don't know.

It's not like I reviewed the department's policy by the time I left because my leaving wasn't forecast. It was a matter of budget, a budget thing that came out of the blue.

So it's not like I had planned or had done a follow-up status, comparative piece a year later, compared to what this was. And that was mainly because there was no legislative push for me to do it.

Q. And you reported to the General Assembly then. You report to Director Wilkinson at the ODRC now, don't you, ultimately?

A. In my new position as parole board member, I'm appointed by the director with concurrence of the Governor.

Q. One last question.

With respect to your conclusion in 1999 that there are inmates in other institutions around the state who have conduct just as egregious as some inmates sent to OSP when you left in June of 2001, do you have any reason [137] to believe that that had changed?

A. I know that had not changed.

MR. VASVARI: I have no further questions. It's been a pleasure taking your time today, Mr. Davis.

Thank you, Your Honor.

THE COURT: Thank you.

Are you going to examine him now or in your case?

MR. LANDES: I would prefer to examine him now. He's come up for the day.

THE COURT: Any objection to that? I would think it would make sense, being a nonjury trial, that we would take all the testimony now.

So understanding there's no objections, I'll allow cross-examination which would in effect almost be direct examination.

MR. LANDES: Thank you. Understood, Your Honor.

CROSS-EXAMINATION OF PETER DAVIS

BY MR. LANDES:

Q. Your committee never argued that inmates at OSP should not be there, is that right?

A. That's correct.

Q. And in your experience, it's not unusual for an inmate to jump more than one classification when he's

* * *

[140] Despite these, the conduct noted, is that right?

A. That's right.

Q. Okay. We can turn that off. Thank you.

It's fair to say that you don't know what the department has done to make the distinctions clearer

between, let's say, administrative control in Ohio State Penitentiary since you left your position?

A. That's fair.

Q. And it's also fair to say that those cases in which you identified similar kinds of behaviors, at least from the outside, that weren't at OSP, that a warden has to ask for a transfer, is that how it works?

A. That's right.

The warden would make a recommendation to central office classification.

Q. And if the warden has bad conduct in his institution but does not ask for transfer, that person, even though they may have done something similar to the person now at OSP, wouldn't ever go to OSP?

A. If central office is not made aware of it, he certainly couldn't go to a higher, higher level.

Q. Okay. Do you agree that subjective professional judgment is required to make these transfer and classification decisions?

[141] A. Yes. Absolutely.

Q. Okay. Concerning notice and due process for inmates transferred to Ohio State Penitentiary, as of the year 2000 you did not hear an issue any more from the inmates, is that fair?

A. That would be a fair statement.

Q. And you have not been there since November of 1999?

A. That's correct.

Q. And you don't know the current and ongoing conditions at Ohio State Penitentiary, do you?

A. That's correct.

Q. As a parole board member, you've never had the situation where an inmate would have been granted parole but for his placement at OSP?

A. I have not.

MR. VASVARI: Objection.

A. I have not had that experience.

MR. LANDES: Thank you.

That completes my examination.

THE COURT: Do you have any redirect?

MR. VASVARI: One or two, Your Honor

REDIRECT EXAMINATION OF PETER DAVIS

BY MR. VASVARI:

Q. Mr. Davis, when you told Mr. Landes that you would agree that subjective professional judgment is necessary to

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TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE HONORABLE JAMES S. GWIN, JUDGE OF SAID COURT, ON WEDNESDAY, JANUARY 9TH, 2002.

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VOLUME 3

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* * *

TESTIMONY OF TODD ISHEE

[599] Mansfield Correctional Institution, isn't it the case that the exchange of such materials is not only a common

practice, but is generally permitted by the correctional authorities?

A. I wouldn't say generally permitted.

I think it does occur, but the—the prisons and the department doesn't sanction inmates violating rules.

Q. Continuing, Mr. Ishee, with our exploration of policies that you have continued and created or discontinued, would you agree with this statement: Confinement at OSP is not intended to punish inmates. The central purpose of confinement at OSP is to control the inmates' behavior until they demonstrate that they can safely be moved back to a facility with a lower security level?

A. Yes, I would agree with that.

Q. Finally, Mr. Ishee, I want to ask you about just two or three specific inmates who have not testified but whose records, I think, have some relevance.

MR. LANDES: Your Honor, may I interpose an objection to the use of this document which was not on the witness list, is not being used for impeachment, has not previously been handed to the defense team?

THE COURT: What is it? What is it?

* * *

TESTIMONY OF BERNARD RYZNAR

[618] Q. And do you refer to it and abide by it in the course of your ordinary business?

A. Attempt to, yes.

Q. Okay. Would you tell us what function 5120-9-21 plays with respect to the classification and transfer of inmates?

A. It is the administrative rule that covers interinstitutional transfers of inmates.

Q. Your office, Mr. Ryznar, must approve every inmate transfer between institutions in the State prison system, is that correct?

A. Is that a question? Maybe could you ask it again? I'm sorry.

Q. Okay. If an inmate is to be transferred from one prison in this state to another, that transfer must ultimately be approved by your office, correct?

A. Correct.

Q. And, in fact, you are the person who approves those transfers, is that not correct?

A. I'm the one that authorizes it, correct. It's under my name.

Q. There came a time when the State built a maximum or high maximum security prison at Youngstown that this case is all about.

You remember that?

* * *

[638] every high max case that came before you?

A. My recollection, I did.

Q. How many high max cases come before you annually?

A. I can—it varies from year-to-year.

I think it's probably under a hundred a year for review—wait a minute.

I'm sorry. That's not correct. That's not correct.

I was thinking of initial placements.

Every inmate that's there should be—I should be getting an annual review.

Q. Okay. So at times as many as 450 a year?

A. Currently about 334, I believe.

Q. Okay. In addition to the hundred additional placements that you just mentioned, correct?

A. Correct.

Q. And in addition to that, Mr. Ryznar, how many other reviews come to your attention a year, require your approval?

A. That's very difficult.

That's—I get the—routinely I do maximum security reviews as well as AC placements, recommendations.

Q. Am I correct in believing there are about 48,000 prisoners in this state?

A. No. It's 44,400 and some.

[639] Q. You would know better than I. I'll take your word for that.

Am I correct in believing that anytime one of those 44,000-odd inmates moves from one institution or another on a security classification change, it requires your approval?

A. It requires approval of the Bureau of Classification, right.

Q. Does it require your signature, your review?

A. It's—the approval is under my signature.

Q. Okay. How many of those cases do you review annually?

A. Personally?

Q. Yes.

A. Just the ones that deal with AC, max, high max, or if they are brought to me if there's a question about the placement.

Q. Is that a thousand cases a year?

A. I'm uncertain.

Q. We know at least 300 supermax cases a year or more, don't we?

A. Right. That's correct.

Q. In addition to those placement decisions, what are your other responsibilities as the head of the Bureau of Classification?

* * *

[792] including before 2001.

A. Approximately 661.

Q. How about just in 2001 alone?

A. Approximately 124.

Q. Of the 661, how many—well, how many are still there?

What's your population today?

A. 330.

Q. And out of the 124 that have transferred in in 2001, how many transferred out?

A. Approximately 42 during calendar year 2001.

Q. Is that backwards, Todd? Perhaps I asked it the wrong way.

How many transferred in in 2001? Is that 42?

A. That's the 42, that is correct.

Q. And how many have transferred out in 2001?

A. 124.

Q. Thank you.

A. That was in 2001. I'm sorry.

Q. Would you—from your perspective, what you have seen as the inmates have come in, can you describe the process that an inmate goes through to get transferred to OSP as you've seen it during your time there?

Does that normally start with a Rules Infraction Board?

[793] A. In almost every case, yes. There's a—with the exception of the initial activation, and I'm speaking now as of what's happening currently, generally everyone that is initiated through a recommendation from the Rules Infraction Board as a result of a guilty finding for violating a rule of conduct.

From that point, the inmate is referred for high maximum placement, brought before a committee. Prior to that committee, there is notice provided to the inmate.

The inmate appears before the committee, is given the opportunity to speak on his own behalf. There's not really any limitation on what the inmate—what kind of information can provide—provide the committee with.

Generally it's surrounding reasons why they are objecting to placement in high maximum.

After considering all the evidence that the committee has, they make a recommendation. It's forwarded to the warden of that institution. If the warden concurs, that recommendation is forwarded to—forwarded along with all the related reports and information to the Bureau of Classification to where the chief makes a final decision on placement at the Ohio State Penitentiary.

Q. If I can go back to the Rules Infraction Board, the Court heard a lot of evidence during cross-examination of the inmates as to the process of that.

[794] But we've only seen guilty findings.

Have you been involved in Rules Infraction Boards?

A. Yes, I have. I've served as the chairman of the Rules Infraction Board at both Lorain and Trumbull Correctional Institution.

Q. What is your experience with how these things come out?

A. There are not guilty findings.

I think the statistics show that probably a majority of the cases that go before the Rules Infraction Board, there is a guilty finding, but there is a percentage of not guilty findings.

THE COURT: Any sense what the percentage is?

THE WITNESS: Your Honor, it probably varies from institution-to-institution.

I would say during a—maybe around the 10% may be a—a

THE COURT: Not guilty?

THE WITNESS: Yes.

BY MR. LANDES:

Q. You also mentioned a separate process for a transfer to high maximum, is that right?

A. Yes.

Q. In your background, what opportunity does an inmate [795] have to make a statement as a part of that process?

A. As a part of the high maximum process?

Q. Right.

A. The inmates are afforded the opportunity to appear before the committee in person, and make a statement. As I said earlier, there's really not any limitation on what can be discussed during that hearing.

My experience has been it generally surrounds around reasons they feel why they should not be placed in high maximum.

Q. You had some experience with that when you were at Mansfield Correctional, didn't you; some people getting transferred from there to Ohio State Penitentiary?

A. Yes, I did.

Q. What was your experience in the kind of forms or process that was used there, that you used there?

A. The process that was used at Mansfield during my tenure was—was in total compliance with the department's policy on high maximum.

Q. Did you make up your own form?

A. Yes, we did.

There was a—there was a period of time where there was not a DRC form that was universally used. So we did create a form in order to guide us through the—through the process and ensure that we maintain [796] compliance with policy.

Q. And that would have been back in '99?

A. '99 and the first half of 2000.

Q. Mr. Ryznar has already talked about the process that will be ongoing when the new regulation becomes effective.

Is it your experience, though, being out there as the warden, that the inmates, for instance, take advantage of their process on appeal?

A. Yes, they do.

Q. And how do they do that?

A. The appeal process available to the inmates is a written opportunity.

I think—I think based on my experience at OSP, virtually all exercise their right to appeal. The exceptions are generally when there is a reduction recommendation. Those generally are not—not appealed.

Q. Oh, okay.

I'm showing you what is part of—actually it's Defendant's Exhibit 5, and it's a form that we've seen many times.

It's what's been called sometimes a security instrument or the supervision reform—review form, that form that has pluses and minuses and such.

I'd like you to tell the Court how that's used and what value it has as applied to decisions about [797] high maximum?

A. This is used in every case that we do an annual security reclassification conference.

The form is filled out at the institution. It's considered at the committee level. It's a tool. It's not—the form does not bind the committee to agree with the form.

There is opportunity for the committee to disagree and change their decision either way.

Q. Okay.

A. I use this form as part of—part of my review.

I use it as one of several tools or considerations that I give in making the—my recommendation.

Q. If you want a paper copy, it's there in your binder under F.

A. Okay.

Q. Would you look at some particular aspects of it and tell the Court, please, how those things sort of dovetail with the kind of considerations you need to make for high maximum and the kinds of circumstances that an inmate at OSP finds himself in?

A. Okay. I'll begin with Number 1, finding of Rules Infraction Board.

Although this is applicable, it's been my [798] experience that an inmate confined at OSP, it's because of the environment, the opportunity to violate rules is not as great as it is in a general population or an open setting prison.

So although this is a factor, it's not quite as meaningful as it would be at other facilities.

Q. How about Number 2, administrative control?

A. Number 2 is not very useful at all.

The inmate, by the time they come to this, they have generally been at OSP for a year, and OSP does not have LC or administrative control. So this, this particular section is not that valuable, in my opinion, related to high maximum.

Q. They are almost automatically going to get a zero or they are—

A. In almost every case, yes.

Q. How about Number 3?

A. Number 3 is—it applies to high maximum.

Certainly there's—there's strong consideration given to offenses that meet that category.

Q. How about Number 4?

A. Number 4 is very similar to my explanation with Number 1.

Q. Under stability factors, are there ones that you feel that you need to tailor in order to consider continued [799] placement at Ohio State Penitentiary?

A. The educational section we do for the inmates, the opportunity to earn their GED. I'm very proud of the work that the education staff does. During calendar year 2001 we had 43 inmates complete the requirements and earn their GED.

The factor with this is that because so much of our education is done in a one-on-one basis as opposed to a general population facility where a teacher may be able to spend their time with 30 students instead of one, I—that factors into the—into the decision there. How about jobs at OSP? How does that come into play with Number 6?

A. We assign jobs basically at two levels.

The inmates are assigned a job as a porter of their cell which means we require them to maintain acceptable levels of hygiene and sanitation.

There are, in the facility right now, 24 inmates who are assigned as a pod porter, and that is more of a meaningful job. They are responsible for a larger area.

They are out of their cell. They are moving throughout the entire pod and responsible for the general sanitation of the area.

But there again, we are a little bit [800] different. I think there's a significant difference in being a porter versus

assisting an electrician or a more responsible job that are jobs that are available in general population facilities.

Q. So they get a minus one for no job removal if they clean their room?

A. Correct.

So, you know, my—I don't put as much weight in that, that particular category either.

Q. I'd like you to look at Exhibit, Defendant's Exhibit H, and this is a document that we've seen before, sometimes filled out.

This is the—we've talked about classification. Now we are talking about what's been called reclassification.

Could you describe the process as it applies to OSP, what actually happens on the ground out there? We don't really need to look at the form.

A. Could you repeat the question, please?

Q. Sure.

Do you have a board that shows up at OSP?

A. Yes. The review process begins with, again, a notification to the inmate of an annual review. A three-person panel is assembled; a representative from the mental health staff at OSP, a deputy warden from OSP, as [801] well as a central office representative.

The inmate's brought before the committee in person, and is able to express their—here again basically whatever they would like to.

Q. Have you seen these things actually happen?

A. Yes, I have.

Q. Okay. And what, what kinds of things are considered or what kinds of things do the inmates put on?

A. The inmates generally appear, and the scope of their communication with the committee is reasons why they think they should be returned to maximum security, which is the next step down from the Ohio State Penitentiary.

Q. Are there any limits on what the inmate's allowed to say?

A. No, there aren't.

They are free to discuss with whatever they want, within reason. I say that by—I don't think it would be efficient for us to permit an inmate to discuss an unrelated topic for three hours, so the committee will guide the inmate towards confinement, classification issues, et cetera.

Q. Do they have 800 minutes? I'll withdraw the question.

THE COURT: Will they have 800 minutes after this experience?

[802] THE WITNESS: They may, Your Honor.

Q. Does the committee run year-round at the institution?

A. Yes, once per month.

Q. Okay. What role do you have in this process and how do you do it?

A. My role is to review the recommendations of the committee as well as all of the factors that are available to me to make a, you know, classification recommendation on the inmate as far as retention or release.

Q. What kind of time do you spend on each one?

A. I think it varies, depending on kind of a case-by-case basis.

If I had to attach an average, I would say approximately 10 to 15 minutes per case.

There are some that go quicker and there are some that are a lot longer.

It's not uncommon for the process to take longer if I need to make telephone calls. It's very common for me to send the packet back to the human management staff for additional details.

I consult with staff at central office, mostly with STG things, consult with that office.

So it just, it kind of depends on a case-by-case. But I'd say approximately 10 minutes on an average per case.

[803] Q. Do the inmates talk to you about this?

A. No, they don't, although there are times when I think there's a need to talk to the inmate, and I go have a conference with the inmate myself and ask them for clarification or reasons why they think they may be able to be safely managed at a lesser secure level.

I have found that to be particularly meaningful on cases where—that are very close in the decision on whether to retain or release.

Q. After the decision is made on reclassification, how is the inmate informed and how is that information handled and why, at OSP?

A. Once the decision is made and throughout this process, I'm a recommender, so my recommendation is forwarded on to the Bureau of Classification and then ultimately to the regional director for a decision.

Once we receive the decision of the regional director, we have a form that's produced by the unit management administrator which represents a summary of reasons for retention or reduction. The form is forwarded on to the inmate.

So they do receive a written notice of the decision.

Q. How is that actually given to them?

Is the unit manager or some other person [804] involved in that?

A. Yes. Generally, the unit staff and in most cases the case manager personally forwards the notification on the inmate.

Q. Why is it that they are not given the actual form?

What is the—the security interest in not handing that form out into the inmate population?

A. At times there are—there's information on the document that we spoke of earlier that could result, in most cases, in a safety issue for the inmate.

Once we hand out a copy of a paper to an inmate, we lose control of that. That form could wind up in the hands of another inmate.

There sometimes is information about Security Threat Groups on there, and to ensure the safety of the inmates, I've decided that it's best that we can provide them with a summary and occasionally omit information that could potentially cause harm.

Q. Do inmates at Ohio State Penitentiary get other reviews, things like behavioral management reviews?

A. Yes, they do.

And these are separate and aside from the security classification reviews that are done annually.

The behavioral management team, at least a representative from this team, meets with the inmates after their initial [805] 90 days, then every six months thereafter.

The purpose of the team is to—is two-fold. First, to monitor compliance with the behavior plan. The second function that the committee has is that at any time they are permitted to, if they feel that the inmate may be ready for a

reduction in security classification, can make a recommendation to me that we do a special security instrument.

And under our current policy, I have the authority to have a special security evaluation done on any inmate at any time.

So although we say that the security reviews are done annually, we still can do those virtually at any time.

Q. You heard Inmate Eskridge complain about being put on Level 1 and it being found through the inspector to have been incorrect.

Does his file indicate that he was put on Level 1?

A. We have deleted the information. That there was a mistake made, and we've corrected the record so that it does not reflect a Level 1 placement.

Q. Okay. Warden Ishee, when an inmate first gets to OSP, do you routinely doublecheck why they are there and whether they should be there?

[806] A. Yes, I do. Actually we kind of double doublecheck.

I personally review the cases of all placements at OSP, as well as do the unit management staff during the orientation process.

Q. And how long after they arrive is the orientation process?

A. In almost every case, within five days.

Q. Have you ever turned people around and put them back on a bus?

A. Yes, I have.

Q. Under the new policy, do I understand that there's going to be additional reviews to—for Level 5?

A. Yes. The new policy will—will mandate reviews for the 5-B level inmates once every 90 days, and for the 5-A inmates once every six months.

Q. We have talked about the fact that out of the 661 that have walked through the door, about half of them have walked back out.

Did I figure that about right?

A. Yes, you did.

Q. In your experience is the process of deciding who to retain a sham?

A. No, I think it's—it's very meaningful.

Out of the over 300 that we have returned to a lower security level, to date only three have returned.

[807] And I think that that percentage of return is—is is—would stand up as a best practice across the country.

Those numbers, I think, are remarkably low, and just kind of a tribute to the kind of program that the Ohio State Penitentiary runs.

Q. Did you check all the files of the inmates who testified here?

A. Yes, I did.

Q. And did they all get a reclassification hearing?

A. Yes, they did.

Q. Did some get more than one?

A. Yes.

Q. I'd like to have you tell the Court about what kind of people you have at Ohio State Penitentiary.

And to assist the Court, did you do inmate profiles?

A. Yes, we did.

Q. And those are at Exhibit I?

A. Yes.

Q. Who did those?

A. Primarily the unit management staff. Those are the folks that handle most of the classification-related issues.

There were some other staff that participated [808] in the process. It was a—we tried to be as very thorough as we could during this.

The profiles are a culmination or summary of information contained in the master file, the unit file, and the

RIB file. To ensure accuracy, we were provided information from the Bureau of Classification reception also.

THE COURT: What are you referring to?

MR. LANDES: There are four or five binders, Your Honor, that are all marked as inmate profiles, and we called them all Exhibit I, but there are several binders of them. There are—

THE COURT: They are—

MR. LANDES: And I thought they had been put up next to your bench. Are they over there in that box?

They are not up there yet, Your Honor. We left you some space.

THE COURT: Okay.

THE WITNESS: Your Honor, what we did with those were—it's a summary of the inmates at OSP, of heir criminal history.

THE COURT: Okay.

THE WITNESS: As well as serious conduct [809] violations that occurred during incarceration.

It's not an all-inclusive record of conduct violations. It's only the very serious ones.

And then the final page is a summary of the circumstances which caused placement at OSP and then the corresponding—

THE COURT: Okay. I'm not sure I need them right now.

MR. LANDES: Okay.

THE COURT: But I just didn't see them in the—up here, and I wondered.

MR. LANDES: Glad you told us.

BY MR. LANDES:

Q. Who is included in these profiles, which inmates?

A. All the inmates at the Ohio State Penitentiary that were there at the time of completion, as well as have been received since then.

The only exception to that was at the time of completion, we did not complete one for inmates who have—who had been approved as a reduction to maximum security.

Q. And about when was that done?

A. That was done in the spring of 2001.

Q. Is there also a summary of the profiles or a summary of the summary for the Court at Exhibit J?

Take a look there.

A. Yes. This is a—a brief summary of the profiles.

[810] Q. And does this include everybody that got a profile?

A. Yes, it looks like the first three pages are profiles of inmates directly named in the—in this case, and then the remaining pages are an alphabetical summary of all the inmates at OSP.

Q. I see it has a profile page.

What does that refer to? Does that refer to the Exhibit I, to the more full description? Do you see the last column?

A. Oh. Yes. Yeah, that's correct.

Q. You've—the Judge has heard from 13 of the inmates.

Can you talk about some representative inmates or so in here that would help the Judge understand what sort of person that you are required to house there?

A. Sure. I—I—I'll just kind of flip through.

A couple names off the top of my head, an inmate by the name of Dustin Might, M-I-G-H-T.

Q. What about him?

A. Inmate Might was housed at Lorain, TCI and SOCF and is a very dangerous man.

TCI, he killed his cellmate in local control with his bare hands.

He beat the inmate's head off the concrete floor of the cell and caused his death.

He was transferred to SOCF, and while in [811] administrative control with a weapon cut the throat area of an inmate.

Was released from local control, and very seriously assaulted an inmate at SOCF, nearly causing death. And the assault was so serious that the reports indicate that the victim was life-flighted to a hospital.

Q. Let me ask you to give the Judge generally an idea of what kind of people are getting sent there to OSP.

What sort of categories, if you can categorize them?

A. Okay. We've talked a lot, Your Honor, about the Security Threat Group.

I don't have too many of the STG leaders or enforcers. There are some.

I think—I think out of the 330 I have right now, those that are listed for sole STG placement is below five.

Obviously we have inmates who have committed very serious assaults on other inmates or staff, and these are assaults where the victim has received substantial injuries and in almost every case required hospitalization.

So these are not the kind of inmates that push an employee or something of that nature.

I have inmates who have killed other inmates while incarcerated. I have inmates who have killed [812] employees of ODRC. I have inmates who have escaped from ODRC facilities or made very serious attempts to escape from prisons in the State of Ohio.

Q. What did you tell the Judge about drug involvements in being sent to OSP?

A. We do house inmates with drug offenses. These drug offenses are not your typical prison drug offenses.

It's—we limit placements in high maximum to inmates with mass quantity drug offenses; ounces of marijuana, for example, or large amounts of cocaine or heroin.

The other type of inmate that's there on a drug offense are inmates who were caught in possession of drugs that were packaged for distribution. An inmate may have—may have been found in possession of 20 packets of drugs that he intended to distribute across the facility.

So our drug offenses are strictly limited to very severe cases.

Q. What have you seen in your experience in other institutions is the result of having drugs in a prison?

A. Drugs in prison are a very, very serious issue.

In addition to being against the law, drugs, inmates who are under the influence of drugs often engage in assaultive behavior, hurt other inmates, hurt employees.

Drugs are affiliated a lot of times with [813] prison gangs or STG members. That kind of runs hand-in-hand, that gangs generally control the drugs.

Drugs cost money. Money is a very important thing to the inmate population, although they are not permitted to

have currency on their possession. A lot of money transactions happen outside of the fence. But money is a very important thing, and drugs and money have caused death, serious assaults, extortion, very serious things.

So drugs represent a major problem to prison administrators, and, you know, our department has a zero tolerance for drug possession or use in prison, although we do find, you know, narcotics in our institutions at time—from time to time.

Q. What about the guy who has several, several, several, lots of minor misconduct tickets? Do you have that sort of person at OSP, too?

A. No, I don't.

Q. Let's tell the Judge how Ohio State Penitentiary is run.

What is the mission of OSP?

A. Our mission is to safely house the most dangerous inmates in the DRC prison system; to date, 44,400 and some. Of that, 330 or less than one percent are confined at the high maximum level.

So we are charged with the safe housing.

[814] THE COURT: 44,000 refers to the total number in the Department of Rehabilitation?

THE WITNESS: Yes, sir.

A. We are charged with the safe housing.

I need to protect the citizens of Ohio, which means nobody can escape.

I need to protect the inmates from one another as well as ensure that the staff and visitors have a safe place to work and visit.

We do this through a tight security program that's coupled with programming and socialization opportunities which are a vital component, in my opinion, to prison security.

Q. How does programming and those other benefits fit into the mission of OSP?

A. I'll try to break down and summarize.

Security procedures are essentially accomplished through controlling inmate movement. Our movement is limited. When it is, it's closely supervised. Inmates are, in most cases, restrained in some fashion.

As a part of that, we offer a wide diverse range of programming and socialization opportunities. I think we've—we've seen examples of program completion yesterday. We have a video department that offers programming opportunities 24 hours a day, 7 days a week.

* * *

[825] generous.

Q. How about legal services?

A. All inmates in DRC have access to legal services and the Courts.

Ours is a little bit unique. I have two paralegals who are full-time employees. Our—generally facilities have law libraries that are just a room full of several volumes of law books. I have a few volumes of law books at OSP and everything else is on a CD, CD rom sets that we purchase and update every year. So ours is a little bit unique.

The inmates, if they are in need of legal services, write a correspondence to the paralegals, make a request, and then the request is delivered to their cell.

Q. How does the programming at OSP compare with segregation units of which you are aware?

A. Programming in segregation units that I'm aware of is very, very limited.

I think that we are heads and shoulders above the segregation units as far as our programming, offerings and opportunities.

Q. How about telephone and visitation use, compared to that?

A. Visiting is afforded to, based on my experience, all inmates that are housed in segregation units across the state, [826] although they are maybe not quite as prevalent as the opportunities that are available at OSP.

Telephone in segregation units, again based on my experience, is limited to emergency calls; for example, in the case of a death of a family member, and attorney and clergy telephone calls.

At OSP we offer all three of those categories as well as regularly scheduled phone calls for the inmate population.

Q. OSP is pretty new and it's air conditioned, isn't it?

A. Yes, the—the entire area, with the exception of the fresh air spaces that are used for recreation activities, is heated and cooled. We maintain the same temperature virtually all year round.

Q. Do those segregation units have some common themes with OSP as well, though, for instance, in the way that inmates are celled?

A. Yes. Some do, some don't. Depending on custody level, celling is either double celling or single celling.

Other common themes that I can think of is, you know, opportunity for shower, opportunity for both indoor and outdoor recreation, controlled movement.

In segregation areas, restraints are always used based on my experience.

Q. Where do they eat generally?

[827] A. In their cells.

Q. How do they communicate with other inmates?

A. Generally through standing at the cell door and yelling or talking out the—out the door cracks to other inmates.

Q. Can they see each other when they talk?

A. Depending on the design. In most cases—in some cases yes, in some cases no.

At OSP, depending on your cell location, you can generally see at least one other—one other cell.

There are segregation areas in the state where you can't see other cells because they are just—there's a long line. So that, that varies a little bit across the state.

Q. Does the size of the pods also make a difference in inmate communication?

A. Yeah, I think it does.

Some of the segregation areas in the state that I've visited are large, which makes communication a little bit more difficult because it's loud, you may have to yell a long distance.

The pods at OSP are small. They run with 15 or 16 cells, so I think the communication opportunities are a little better than some of the segregation areas because of the smaller setting.

[828] Q. What segregation units are you talking about in your experience that you've seen and you are familiar with?

A. Well, I've seen almost—almost all that I've—most of the ones in the state.

I'm very familiar with the ones that I've worked at. I've worked at Lorain, Trumbull and Mansfield Correctional

Institutions so I'm very familiar with those because I worked there for a number of years.

Q. Have you seen them at SOCF and Lucasville?

A. Yes, I have.

Q. You said that you were at Mansfield.

How does OSP compare with segregation for death row inmates?

A. Segregation for death row inmates is handled in the area called DR 5. DR 5 is a very, very secure area. It's 20 cells. The inmates are assigned to an individual cell.

They are moved individually under very heavy restraint.

The escort numbers as far as staff are similar to OSP.

The doors are the same. We have a solid door as opposed to bars. Manci in the death row segregation as well as death row general population and the segregation area that's used for the general population has solid doors.

Q. Now, that's the segregation part of death row, right?

[829] A. DR 5, yes.

Q. We heard some testimony that inmates may want to go back to death row as opposed to stay at OSP.

What are the differences that bring that up?

A. I think the quality of life that's available to an inmate is better at OSP.

DR 5, when I was there, didn't have the televisions in the cells, we didn't have near the programming opportunities. Commissary offering was much lower.

Q. Can you be on death row but have a security classification that's actually lower than what gets you the kind of conditions at OSP?

A. No. The death row inmates in Ohio are assigned as maximum security inmates and not eligible to decrease below that.

Q. Okay. Do you have inmates that want to stay at OSP when you tell them they could transfer?

A. Yes, there are some.

Q. Why do they say that?

Why do they do that?

MR. GILBERT: Objection.

THE COURT: Sustained.

MR. LANDES: 801(d) admissions of party opponent, Your Honor. This is a class action. If they [830] told him they want to stay, that's what it is.

THE COURT: If he repeats a specific statement, but he can't testify as to generally.

MR. LANDES: Very good, Your Honor.

THE COURT: Just—

BY MR. LANDES:

Q. Can you tell the Court what inmates have told you who have said that they wanted to stay at OSP?

MR. GILBERT: Same objection, Judge.

THE COURT: Wouldn't it be an 801 admission?

MR. GILBERT: I think he needs to identify more particularly who the individual inmate was that he had a conversation with.

THE COURT: Why don't you lay that foundation?

A. You are going to have to give me a minute to—

Q. Sure.

A. I can recall statements. To be able to attach the statement to a specific inmate is going to be tough.

Q. I guess I mean at OSP since you have been working.

A. Yes.

Q. Is that—

A. Yes, I've had conversations with more than one.

MR. LANDES: Your Honor, I would argue that that necessarily is a class member and, therefore, would be [831] an 801 admission.

THE COURT: It is if he can remember a specific statement and not just a generalization.

THE WITNESS: I can recall two statements that I can quote.

THE COURT: Go ahead.

A. I can quote, "Because I'm safe."

The other I can quote is "Because it's not too bad here."

Q. Are you familiar with other supermaxes, as they are called, in other states?

A. Yes.

Q. And how does OSP compare to that, what you've seen?

MR. GILBERT: Object to that as well, Judge.

THE COURT: There's this dispute as to what the comparison is.

I'll allow it. It may not be relevant if the comparison is not other supermax prisons.

So I'll allow it, but it may not be relevant if the comparison is with other people in AC.

But go ahead.

A. Could you ask me the question one more time, please?

Q. Sure. Compared to other supermaxes in other states, how does OSP compare, let's say as to programming?

A. As to programming, I think we are at this time [832] offering—I can think of three that I've visited.

One that claims to be a supermax, their program offering is as extensive, possibly greater, although I would argue that their definition of supermax is very different from Ohio's definition of high maximum.

So I guess what I'm saying is they call themself a supermax, but I think it's comparing an apple to an orange.

Q. Okay.

A. The second unit that I visited is similar I think.

MR. GILBERT: Judge, objection, only to qualify which institution he's talking about.

THE COURT: Can you tell us which one, which ones?

THE WITNESS: Sure.

A. The first one I was referring to is Oakpark Heights in Minnesota.

The second one that I'm talking about now is Colorado State Penitentiary, and even CSP is a little bit

different because their Department of Corrections does not operate a maximum security facility.

Inmates go from close to administrative segregation or their supermax-type of a unit.

That facility has a—offers a strong programming component, although I think ours is stronger [833] with the addition of the program booth opportunities that we offer.

Q. They don't have that there?

A. No, they don't, at least not when I visited, they did not.

The other I've been—the other that I'll compare to is the Bureau of Prisons ADX facility, and I think that based on what I saw when I was there, we were offering a great deal more programming opportunities than that facility does.

Q. How about outdoor recreation? How does it compare?

A. Outdoor recreation as—do you want me just to compare to the three facilities that I have been talking about?

Q. Please.

THE COURT: Okay.

A. Minnesota offers an outdoor recreation area that is more open than ours at OSP.

It's a chain link-type setup that's outside of the building.

CSP offers identical conditions to the Ohio State Penitentiary.

And the Bureau of Prisons offer—it's—it has an open top. It's three walls with an open top.

Q. Okay. How does OSP compare with the use of force and [834] assaults in the institution?

A. I think our numbers are very low as compared to high security prisons in Ohio, as well as high security prisons across the country.

Our use of force rates are minimal.

We've experienced a great reduction in those since we opened. When I was the major, there were—the incidents were more frequent.

And we are down now to the level where we are—we are at less than five per month. And even those are, in most cases, not very intense or serious use of force incidents.

Q. Can you say generally that otherwise the conditions are more or less the same at the other supermaxes that you are familiar with?

MR. GILBERT: Objection.

THE COURT: What grounds?

MR. GILBERT: Leading.

THE COURT: Sustained.

Q. What did you say about other similar conditions that you found at supermaxes of which you are familiar?

A. Supermax-type operations generally are very similar across the country.

There, you know, there's different words, terms. If you look at it as the big picture, generally [835] they are very similar.

There is a range, though, from supermaxes that operate very, very restrictive with hardly any privilege up the spectrum to, you know, institutions like OSP that are offering programs, that are offering congregate activity opportunities, et cetera.

Q. I would like you to take a look at Defense Exhibit C in your book, Page 11.

That's part of the new regulation on classification.

We have been talking about what your experience has been to date.

This regulation actually gets into sort of codifying differences between privilege levels of different classifications, doesn't it?

Are you there?

A. Yes.

Q. Okay. What's the scoop? This lays out privilege levels of different classifications for the policy that's been passed and will go into effect March 1st?

A. Yes.

Q. Can you just take a look at that and let the Court know what conditions at OSP are better than elsewhere as it relates to phone calls, let's say?

I'm asking you to compare OSP with other [836] locations in Ohio as opposed to some other comparison.

A. Other segregation locations?

Q. Yes, that would be fair.

A. Based on my experience, it's better. You know, as I stated before, the segregation units typically do not allow nonattorney, emergency or clergy telephone calls.

Q. And you would have both Level 5-B and 5-A housed at Ohio State Penitentiary?

A. Yes.

Q. How about recreation?

A. Recreation, based on my knowledge of the seg units in Ohio, the five one-hour opportunities per week is followed, that's an ACA standard, and all our units are accredited and, therefore, comply with the five-hour period.

I think the difference comes under the 5-A category, where the inmates would have congregate opportunity with at least one other inmate.

Q. That would not be true in segregation units that you are aware of?

A. In some. Some are double celled, and in a lot of those cases the practice is that both cellmates go to recreation together.

Generally in the units that do not have double celling, the recreation opportunities are individual.

[837] Q. Okay. How about showers, how does that compare with your experience? Not how many showers you take, but rather segregation units.

A. The facilities that I've worked at, Manci—well, we had both at Manci.

A lot of the seg units in the newer facilities have showers in the cell.

The theme behind that is although it's expensive for construction, the theme behind that is security. It's one less movement that correctional staff have to make.

So there are some that have showers in their cells which offers the inmates unlimited access to the shower.

The other facilities that do not have the shower in the cell, I think generally now are providing five. I think we are consistent with that. I think the minimum that I'm aware of is the requirement is three.

So we are exceeding the requirement, but we are fairly consistent in that area.

Q. How about television?

A. Television, as I testified before based on my experience, is nonexistent in other Ohio segregation units.

The exception that I'm aware of is the segregation areas at SOCF. They do have—do have [838] televisions mounted on the wall. But by and large, OSP and SOCF are the exceptions that I'm aware of.

OSP's obviously a little bit more available because the inmates have a TV in their cell and can watch whatever channel they want. At the SOCF, you have to watch what's being played.

Q. How about visitation? How does that compare?

A. I think it's fairly consistent.

Q. I think this actually goes over to the next page, the visitation.

How about programming, how does that compare—

A. I think—

Q. —as it's going to be here in the regulation?

A. I think, you know, as I've stated before, the programming opportunities that OSP offer—offers is unmatched by any other location in Ohio that I'm aware of as it pertains to segregation areas.

Q. Thank you.

We have been talking about outdoor recreation. I wanted to draw your attention to Exhibit N as in November, Defense Exhibit N.

What are we looking at, Warden?

A. This is a copy of a computer-made projection of what the new outdoor recreation areas are going to look like at [839] OSP once completed.

Q. What are we—are we seeing the ceiling there, the—is that what's on top here?

A. Yes, it's a—it's going to be constructed out of—the name is escaping me. It's a mesh, a wire-type mesh ceiling that's going to allow the elements, the snow, the rain, the sun, the cold, the hot—it's going to be as open as possible ceiling surrounded by walls on all the sides.

Q. Is the top view day and the bottom view night?

A. Yes, it is.

Q. Why are you adding that?

A. It just—it goes along with, I think, the—my philosophy on things that we need to do at OSP.

I think that, you know, in addition to the other changes that I've initiated or are in the process of initiating, I approached central office and we had discussions about outdoor exercise opportunities.

We went to the extent of researching with other jurisdictions across the country. I think it's just—it's something that's going to improve the quality of outdoor exercise opportunities for the inmates housed at OSP. We are doing it because we think it's a good correctional decision on our part.

Q. I'd like you to look at Exhibit L, and while I'm [840] doing that—L as in Lima—what is the American Corrections Association?

A. The American Correctional Association is an organization or body that has developed standards for correctional agencies; not only prisons. They have standards for jails, boot camps, penal industries, headquarters or central office.

They have a set of standards that they require if you would like to be accredited by the organization, that you are required to comply with.

Q. Has—and is Exhibit L the report for the first review of the facility?

A. Yes.

Q. And the one behind it, M as in Mike, is that the second review of the facility?

A. Yes, it is.

Q. Did OSP pass?

A. Yes, on both occasions.

Q. Do they get percentages for that?

A. Yes. But ACA requires compliance with a hundred percent of the mandatory standards. Their mandatory standards are generally attached to life safety-type issues.

An institution must comply with a hundred percent of those during the audit.

[841] The remaining standards, which number I think close to 300, institutions must—must comply with at a minimum of 90% of those standards.

Our scores during the first audit were a hundred percent compliance with the mandatory standards, and 99.5, I believe it was, on the nonmandatory standards.

During our second audit, we complied with a hundred percent of the mandatory standards, and 98.7% of the nonmandatory standards.

So in both cases we were awarded accreditation or in the second case reaccreditation by ACA.

Q. In the most recent review, did they bring up or did they fail you for outdoor recreation?

A. Yes, they did.

The requirement as it stood in 2001 required a certain height of the ceiling area of the outdoor exercise.

Due to the construction of OSP, our ceiling height is not what ACA requires it to be. That standard in this year changes, and it eliminates that requirement for height.

Q. Was there any other aspect of the outdoor recreation that the ACA failed you on, other than ceiling height?

A. No.

Q. And what is the change that's going to occur [842] concerning ceiling height with the ACA?

A. As I recall, the height was required to be 18 feet from the floor to the ceiling, and OSP does not have 18 feet.

Q. And is that—is that requirement going away?

A. Yes, it is.

Q. I shouldn't call it a requirement, should I?

A. Well, it's—it's just—it's part of the standard.

Q. Okay. But it's nonmandatory?

A. It's nonmandatory.

The other thing I think it's necessary to add is the fact that once our new outdoor exercise areas are complete, they will be in full compliance with standards set forth by ACA.

And the blueprints are completed and are in compliance, so.

Q. I'd like to show you one page of Exhibit M, Page 39.

Take a look at that, please.

A. Okay.

Q. Is this a summary that the ACA compiled of what's called significant incidents?

A. Yes.

Q. And what does that mean?

A. ACA requires reporting on all significant incidents during their three-year accreditation process, so I'm [843] required to report to them things that fall under these categories.

Q. What does that show for the number of assaults, inmate-on-inmate?

A. Zero.

Q. How about number of escapes?

A. Zero.

Q. How about number of assaults by an inmate on staff using weapons?

A. Zero.

Q. How does that compare with other institutions, especially considering the kind of folks that you're asked to take care of?

A. I—I think it's—it's a—it's a comparison that I'm proud of.

I think that there are institutions in both the Ohio system as well as across the country would be hard-pressed to match these kind of numbers. It's just—it's an attribute to how safe the facility is operating.

MR. GILBERT: Judge, we enter an objection, move to strike.

I don't think it's relevant to this lawsuit, how secure the institution is.

THE COURT: Inmate against inmate goes to

* * *

[847] A. Yes.

Q. And then if we look down at the bottom of the document under recreation and showers, it says "Seven one-hour recreation periods per week and five-minute showers seven days a week"?

A. Yes, it does.

Q. Now, under the new classification system that will become effective in March, 2001, isn't it true, Mr. Ishee, that prisoners on Level 5-A corresponding to the old Level 3 will have only two 10-minute phone calls per month?

A. Yes.

Q. And isn't it true that rather than recreation seven times a week as on the present Level 3, they will have recreation five times a week?

A. That's true.

Q. Now, with regard to the mission of the Ohio State Penitentiary, Mr. Ishee, I wonder if you would agree with the following statement:

"As inmates confined at OSP demonstrate increasingly responsible behavior, they move through a level

system. And with the exception of a few inmates, are transferred to facilities with lesser levels of security."

A. Yes. I agree with that.

Q. In fact, you wrote it, didn't you?

A. Yes, I did.

[848] Q. And affirmed it under oath.

My question is how do you decide who those few inmates are who will not move through the level system and will not be transferred to facilities with lesser levels of security?

A. That's a classification decision that's—that's, you know, made at the appropriate time considering all of the information that's available to me or others who partake in the classification process.

Q. Now, when you say that there are a few inmates who will not move through the level system and will not be transferred to facilities with lesser levels of security, you are talking about prisoners who will be there the rest of their lives, are you not?

A. I think it's more fair to say prisoners who will be housed at OSP for a long time.

Q. Something like—and if this does not seem right to you, just tell me—something like what Mr. Ryznar had in mind when he said that beginning on March 4th, an OSP committee will meet with incoming prisoners and tell them if they can't expect to get out in three years?

A. Yes. When this new policy takes effect, we will provide the inmates with a notification as required by the new policy.

Q. And if you are going to know that information on [849] March 1st, I assume you know it now for the prisoners who are presently at OSP?

A. I think it's—I think it's fair to say that I do know of some of the inmates in population that because their history is so very serious and dangerous, that, yes, they will be and continue to be housed at OSP for a long time.

Q. Is there a list of such prisoners, Mr. Ishee?

A. No, there isn't.

Q. Is there a list in your head?

A. I think that—I think that there are some that, yes, I do know that are going to be housed at OSP for a very long time.

But I think it's also important for us to, you know, reevaluate every inmate every year as they come up for classification, and make the decision at that time.

Q. So that even if you had told someone they should not expect to get out until after three years, you would nevertheless interview them in each of the intervening years?

A. Yes, we will, because there's nothing that would preclude our initial decision from changing.

You know, I think there's factors that, although I or one of my staff may tell an inmate when they get there on—

during their initial hearing that, yes, you [850] fall into this category of expecting to be at OSP for a period of three years or greater, there exists the chance that we may, through, you know, housing, watching, monitoring the inmate, change our decision and elect to release them sooner.

Q. Well, let me ask you, Mr. Ishee, about some particular prisoners.

Are you familiar with a prisoner named Gerard Valdes?

A. Yes. What's his number?

Q. His number is 182559?

A. And he's currently at OSP?

Q. Apparently.

A. Yeah, I just wanted to assure that's the same person.

But yes, I am familiar with him.

Q. And is he the same person who in April, 1996 stabbed an inmate 17 times over marijuana?

A. I'd have—I need to review his record to give you a hundred percent certainty.

But, yes, I do recall that he was involved in a stabbing incident.

Q. Here is the high max security classification review form for Mr. Valdes from the year 2001.

And with this before you, would you say I'm correct in suggesting that he had apparently, in April,

* * *

[858] Q. Stojets still at OSP, Bishop transferred out on an interstate transfer?

A. I can testify that I transferred Bishop to another Ohio prison.

What happened with him after that, I'm not totally aware of.

Q. Which other Ohio prison did you transfer him to?

A. Correctional Reception Center.

Q. I'm conflicted, Mr. Ishee, as to whether to ask you to call the names of that list of persons in your head who are going to be there a long time, and I think I've decided not to because I realize that's a very grave thing in this kind of setting, to put that kind of information on the table.

But let me ask you to take a moment, if you would, and in your own mind reflect and tell me how many persons in your opinion fit that description to whom I assume you will be giving that information on the 1st of March; that is, persons already at the institution.

A. I—you know, without reviewing records which certainly will happen before placements, official placements into 5-B and 5-A, I'm going to give you a ballpark.

And I think that as it stands now, that number would be probably less than 15.

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TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE HONORABLE JAMES S. GWIN, JUDGE OF SAID COURT, ON THURSDAY, JANUARY 10TH, 2002.

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VOLUME 4

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DIRECT EXAMINATION OF CHASE RIVELAND

[866] Q. What do you do this evening?

A. I'm scheduled tentatively to teach a class this evening, but that remains on travel conditions.

MR. LANDES: In the interest of time and efficiency, Your Honor, the plaintiffs have agreed to allow me to put a set of the written qualifications in the record and just hit the high points—

THE COURT: That's fine.

MR. LANDES: —in the oral testimony, which we will do now.

BY MR. LANDES:

Q. I wanted to return, take your attention to your time in Wisconsin.

Did you have involvement with a facility to take care of the most high maximum or most secure-required inmates in Wisconsin?

A. I did. At one point in time during my tenure in Wisconsin, I was appointed as the superintendent of what is named the Portage Correctional Institution which at the time was the highest security facility in that state.

Q. Did you actually run it, too, did you say?

A. I actually designed, built and briefly ran that institution.

Q. Did you ever run any State's prison system?

A. I have.

[867] I was the executive director of the Colorado State correctional system from 1983 through 1986, and the Washington, the Washington State correctional system from 1986 until January of 1997.

MR. LANDES: Your Honor, is there a trick with the microphone so that he can sit up and be comfortable but still—

THE WITNESS: I'll just attempt to speak a bit louder. That may help.

THE COURT: I think we can hear him.

MR. LANDES: Thank you, Your Honor.

Q. In Washington, did they have facilities for the most high secure inmates?

A. There are. There were and there are.

Q. Can you describe those?

A. In Washington, we created what, by name, units called intensive management units that were 90 to 110-bed units attached to larger institutions.

Basically, you know, operational terms, look exactly like a supermax institution or the supermax institution represented by the Ohio State Penitentiary.

Q. Have you been an expert witness in cases dealing with those kinds of institutions?

A. I have.

Q. Where?

[868] A. I was involved in the Ruiz case in Texas and the Osterback case in Florida.

Q. Have you also been an expert witness concerning the classification of inmates for security?

A. I have.

Q. Were you picked by the National Institute of Corrections to write about high security facilities?

A. I was.

Q. What did you write? What did you study?

A. In effect, I was asked to write a monograph about supermax prisons. The request was made early in 1997, it was published early in 1998.

Its intent was the National Institute of Corrections had an interest in the proliferation, if you will, or the increasing numbers of supermax-type institutions and settings around the country, and wanted a monograph that would describe the things that people should look at if they were either considering building such facilities or considering operating such facilities or, indeed, were already operating such facilities.

Q. Is there anything else out there that is like that monograph that you have written?

A. There have been some articles written by a variety of individuals on specific type things. I have not seen a generic-type document since that time.

[869] Q. What do you call the type of facility that we have been calling supermax?

A. As I surveyed facilities in jurisdictions around the country and looked physically at many of the similar-type operations around the country, I found that the—that the verbiage used to describe them differed across jurisdictions, so my only sort of universal verbiage was to call any facility or any program that operated and managed inmates on a 24-hour-a-day, 7-day-a-week basis for extended periods of time would be, in effect, an extended control facility.

Q. What is the genesis of that type of facility?

Is this a revolutionary concept or does it come from something else?

A. Actually, as I traced it back, you could find its birthplace probably would be Alcatraz, run, operated by the Federal Bureau of Prisons many years ago, to which they sent either notorious or terribly visible or terribly assaultive federal inmates.

That evolved into the Federal Bureau of Prisons opening a facility called Marion in Illinois that they operated as a—as what I would call an extended control facility for a period of time until they replaced it with a facility in Florence, Colorado entitled the Administrative Maximum Prison.

[870] It seemed that about the time of Marion, that a number of jurisdictions around the country began planning similar kinds of facilities or programs for their jurisdictions.

Q. So that the feds were first?

A. That's my analysis, yes.

Now, having said that, many jurisdictions of course have had a variety types of disciplinary segregation, administrative segregation, protective custody over many years, but typically operated with different types of intent.

Q. Had the intent at one time been disbursal of these kinds of inmates?

A. It was. For many years I think we in corrections used disbursal as our means of mitigating problem inmates in the system.

You would move them to different places, either within the jurisdiction or between jurisdictions if you will, or we would keep people moving for a period of time so that they didn't become a serious problem in a given institution.

Q. On—in the contrary, what is the concept behind what you called extended control facilities?

A. I think the reverse of that, of course, is concentration. That you take the individuals that you feel [871] are the greatest threat to the system and you concentrate them in singular places, believing that you can mitigate the problems that exist in other institutions.

Q. In your studies, has that been effective?

A. I believe it is.

I don't know of any defining research that says that that's effective, but I think that there—there was a great deal of anecdotal information in many jurisdictions that would suggest that it is.

Q. All right. How many of these types of facilities have you seen yourself?

A. If we used my definition of extended control facilities, I've been in probably in about 20 to 25.

Q. Does that include Ohio State Penitentiary?

A. It does.

Q. And have you formed opinions about Ohio State Penitentiary?

A. I have.

Q. First, would you explain to the Court what you did to examine Ohio State Penitentiary?

A. I made an initial visit at the end of August, a three-day on-site visit to the penitentiary.

Prior to that, I had asked for and received, I might add, voluminous amount of information including policies, procedures of not only OSP but of the DRC, [872] literally a couple of boxes full of documents that I reviewed prior to an on-site visit, some of which were subject matter that I had specifically requested, and some of which—some of which

were the kinds of information that the department and OSP themselves thought might be helpful.

During my first visit to OSP, I interviewed staff at all levels, inmates both in their cell and individually being pulled out to interview booths for some interviews; I observed almost all activities that you would anticipate would occur in such a facility, including feeding times, medical visits, the use of the library process, legal access; toured the entire facility inside and out, I might add, because of proposed plans; and then reviewed a variety of records and other policies and procedures that were on site.

Q. And I wanted to let you know, please refer to your report or notes, if you need to, to refresh your memory.

A. Thank you.

Q. Did you interview—do you know about how many inmates you interviewed? And I don't necessarily mean at that visit.

A. Individually I interviewed probably about 20 inmates. Other than cell-side, I talked to a wide range of inmates in cell front.

[873] Q. I see. In addition to the 20?

A. In addition to the 20. And I might add that this included a second visit in November.

Q. November of 2001?

A. That is correct.

Q. Okay. Did you interview some inmates who were chosen by the plaintiffs?

A. I did.

Q. And why did you do interviews of inmates?

A. Basically I just wanted to get a general reflection of how inmates that were in that particular facility were responding and what they saw either as problems for them individually, or what they saw as the experience compared to other experiences they may have had in the correctional system, to either verify or refute items that I had seen either in their initial complaint, to look at the issues that I thought are germane to the operation of an extended control facility, and to compare that with what I could observe or read about.

Q. Did you listen to the inmates to try to figure out whether there was some other item that you should put on your agenda for inspection?

A. I do. Typically if I feel that it raises an issue, the conversation with an inmate raises an issue that I haven't looked at or hadn't planned to look at, then I will

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[878] it to other states' prisons?

A. I did.

Q. Why?

A. Really for two reasons.

One, I think by having the ability to compare a singular facility's operation to other jurisdictions, one can compare it to generally acceptable correctional practice or standards.

A second is that that's a base of experience that I have, both in my operation of—in three jurisdictions, but also a fairly intensive look at similar kinds of facilities in several other jurisdictions that I have visited.

And I think thirdly, because the jurisdictions frequently will transfer inmates between jurisdictions through the interstate transfer process, and it's not unlikely that an inmate at OSP might end up at a similar kind of or similar custody facility, at least, in another jurisdiction, and the reverse could be true also.

Q. So an inmate might reasonably expect to be in another state's prison system?

A. It is not at all uncommon, particularly with high custody or high security inmates.

Q. Before we go into—you looked at various areas and subdivided the operation and conditions that are in various [879] areas.

Before we go into that, would you let the Judge know how you felt Ohio State Penitentiary stacked up with the other places in your experience?

MR. LOBEL: Objection. "Other places" is quite vague. Could you make the question—

THE COURT: Okay.

MR. LANDES: Other institutions.

THE COURT: Why don't you rephrase?

MR. LOBEL: Other supermax institutions?

What's the question?

Q. Other prisons that you compared it to.

A. If I would be allowed to rely on my definition of extended control facility—a

Q. Yes.

A. —because again such facilities range from the 90-bed facility that I, indeed, operated in the State of Washington to 2,000-bed facilities operated under similar conditions in Florida and Texas, and a couple thousand-bed facility, the notorious Pelican Bay in California, but the basic operation of those facilities under my definition would remain the same.

I was quite surprised, quite honestly. I have activated new institutions in my career in all three states, and activating new institutions such as this that's [880] simply a little over three years old—I believe opening in May of 1999—'98—'99, the first inmate—and operating a new institution that is—where there's not a lot of history, either within the jurisdiction in operating a supermax facility, or even arguably around the country in operating supermax facilities, I was pleasantly surprised, quite honestly, at the amount of programming that was available at OSP, the level of sophistication that I felt the staff displayed in terms of restraint, the absence of heavy use of force that I find in a lot

of extended control facilities, the absence of heavy use of chemical use of force that I find in many such facilities.

The—I was completely astounded and can only compare it to one other similar facility, the fact that all inmates, except those on the initial orientation, are allowed televisions. This is not common in anywhere in the country, with one exception possibly being the Administrative Maximum facility run by the Federal Bureau of Prisons; and the amount of programming available, and that, of course, translated to me as stimulation of the human mind, which is devoid in many such facilities.

So my initial impression was a very favorable one in terms not only of what was already there, but the progress I felt the facility and the department had made during a fairly brief period of time, of the activation of [881] that facility.

Q. You mentioned classification.

What did you find concerning the classification system for high maximum as practiced by Ohio State Penitentiary?

A. I thought that they were very thoughtful.

As I wrote the monograph on supermax, there were a couple criteria that I felt were terribly important for any jurisdiction that were using high custody facilities.

First of all, it's important that a criteria be established that represent the characteristics of the individual to be sent to a high custody facility. I might add, there are other specialized facilities where the same thing should be true; psychiatric facility, an alcohol/drug treatment facility.

But that it should be explicit so that people understand that not simply anyone should be transferred to such facility.

And I found that in the policy.

It then should have a rigorous review, both from the referral and who subsequently becomes involved in the decision for movement and approval for movement and placement in such a facility. I found that to be a very rigorous policy also, going from the referring warden to [882] the central office and a subsequent review back at OSP again. That was a step that frequently isn't done in almost any jurisdiction.

And I think that the adherence to that policy then becomes important. Is the policy actually being followed? And I would look at case files in order to determine if I felt that that, indeed, happened and, of course, the review of the 444 profile cases to see if, indeed, I felt that it happened.

Q. How did you go about testing whether or not the policy was being followed and whether your view of generally accepted correction practice was being followed?

How did you do that with the materials you had?

A. Well, in the instance of the 444 profiles, I actually charted them out and made my own little chart, if you will, on the criteria that were reflected in those particular profiles and did they meet the criteria that were in the policy.

Secondly, I did sort of random reviews of some cases both on the case managers as well as those pulled from the units to see if, indeed, the criteria were established in the inmate file.

Q. Just for purposes of refreshing your memory or to finding the past recollection recorded, on Page 9 of your [883] report you do set out some numbers of your examination of the 444 profiles that you looked at.

Does that assist you in letting the Judge know the results of your study?

A. It does.

Of the 444, I found that 283 of the inmates that were profiled had assaulted one or more other inmates. That 23 of those assaults on inmates had resulted in a death of an inmate. That 209 of the inmates had assaulted one or more staff. That eight of those assaults resulted in the death of a staff member. That 155 of those inmates had assaulted one or more inmates or one or more staff.

Fifty-seven of them had one or more escapes or escape attempts from major institutions. One hundred twenty-eight of those inmates had significant involvement in a major disturbance or a riot, and in most instances were leaders of the incidents.

And 42 of the inmates had records of possession of one or more deadly weapons.

I did not include in my chart documented instances of people—of actions that typically could be considered assaults such as throwing of body fluids, blood, urine and other body fluids at staff.

Typically those would be considered assaults. I did not count those in these particular figures.

[884] Q. Okay. Did you also look at the rates at which people came and left the institution to determine whether or not the classification policy was too broad or too narrow for this kind of institution?

A. I did.

Q. What did you find there?

A. The most recent figures that I had show that up to the time of opening in May of 1998 to December 31st of 2001, that 661 inmates have been received at OSP. That there were a few over 330 released during that period of time.

That in 2001 alone, there were roughly 121 that were sent out and roughly 100 received.

Q. If I told you that numbers have been run from the beginning of the institution to the end of 2001, and 661 had been accessed or brought into the institution, and about 324 had gone out of the institution, what does that tell you about the use of the classification policy?

A. I think that shows that they are being quite effective in the application of that policy, and the policy as read it, the initial policy, is one that is trying to preclude the unnecessary placement of people in a place such as OSP, in an environment such as OSP, and that obviously two things are occurring given those particular numbers: First of all, the intake, given the size of the [885] Ohio correctional system, is quite small. Very few in numbers compared to the 140,000 or whatever the number of inmates in the total system are today.

But secondly, that the movement is not one that is allowing people in general to languish. Almost 50% of the

inmates are being moved out in fairly short periods of time, and I use the word "Short" because in most extended control facilities, three years that this institution has been open, is not a long period of time.

Q. The numbers for 2001 were about 41 coming in and 124 leaving.

What does that tell you about trends?

A. Well, it's a trend I guess that I—that is concurrent with or congruent with many other trends I've seen as I looked at the operation of the facility over the years, that people have continually improved the operation of the facility.

And it would suggest to me that a great deal of effort is going into moving people out and not letting people languish.

Q. Did you examine the number of profiles that showed that person was there for gang-related activity?

A. I did, in that same review of the 444, I did so.

Q. Did you find the number significant?

A. The—I actually only found one profile that [886] suggested that the inmate was there for gang activity or STG, Security Threat Group activity in and of itself.

There were other instances of notation that the person was believed to be or admitted to or was a Security Threat Group member, but in each of the other instances there was another causative criteria that was met, an assault of a staff member or some instances murder or repetitive escapes

from—attempts from major institutions, similar kinds of behaviors.

I simply found one of the 444 that appeared was there for Security Threat Group involvement only.

Q. How does that compare to your experience with other similar extended control facilities on their use of that criteria?

A. It's somewhat astonishing. I could mention, for example, in the State of Texas, if you are perceived to be a Security Threat Group member in Texas, you go into conditions like this automatically, whether you have other compelling behavioral problems or not.

And I might add that over 7% of the Texas inmate population is in conditions like this at the time that I was involved in the Texas system.

Q. Could you tell me something about Hispanic names in San Antonio?

A. I did. At the time that I was touring the Texas [887] system, that was in 1997, 1998, if you had a Hispanic surname and came from San Antonio, you were placed in conditions like OSP. The terminology in Texas was administrative segregation, and there were many institutions operated under that condition.

But that was as simplistic as their criteria was at that point in time.

Q. We have been talking, I suppose, both about the transfer-in process and also the process of review for retention at OSP.

If we could focus a bit on the process for review for retention at OSP, what did you find about that or what can you conclude about that from what you looked at?

A. Well, in fact, again the time frame from when I first reviewed records of OSP and visited OSP, which would have been the review of records in early August of 19—of 2001, the first visit in late August of 2001 and a subsequent visit in November of 2001, was a work-in-progress.

I felt that the review process that was in place initially equaled or exceeded those of the review processes of other similar extended control facilities, and that the review process was, indeed, being done. I observed such hearings as were being held.

[888] The new—their new classification process that sets out review processes that will be effective March 1st even goes beyond the initial process that I both read about and observed.

Q. What did you think of the criteria for transfer and retention that you found in the new policy?

A. I felt that the—that a serious attempt was made to, in the new policy, to enhance the ability to move people out, was one particular piece of it.

The other part, I think, is that it enhanced greatly the privileges available to inmates in the system and allowed them to access those privileges much quicker.

Q. Does the policy still provide for professional judgment in those decisions?

A. It does.

Q. Why is that?

A. It's my experience that in any process that is related to classification in a correctional system, that it is essential that professional judgment be allowed as an override.

I know of no classification system in the country that does not allow for professional judgment to prevail. In fact, I believe in my monograph I talk about that a bit.

There should be, however, safeguards to that [889] process so it's not an individual simply making a professional judgment in and of themself, but that the process itself allows for review; and if a reversal of a recommendation is made, that that reversal is made at the highest levels of an organization.

I find that the process that is documented in the policies for the DRC, both the old policy as well as the present one, certainly meet the expectations I would have of such a policy.

Is this cutting out? It seems like it's cutting. Okay.

THE COURT: It's okay.

MR. LANDES: The Judge can hear you.

THE WITNESS: Okay.

MR. LANDES: That's what counts.

Q. Did you see any evidence that you reviewed that would indicate that professional judgment was being abused?

A. I did not. And I did review a variety of records looking to see if there was any indication that that was the case.

There clearly were instances where a local recommendation would be overridden at the central office. I find that not to be unusual for any variety of reasons, either different information being available at different points in time, or that a central figure or figures felt [890] for the betterment of the system or the safety of the system that an override should be applied.

I might add to that, in many instances in the jurisdictions I served, I was that final person to make that decision to reverse the local recommendation, and found that I had the need to look at the whole system; not simply the singular institution in which the inmate was being placed.

Q. What can you tell the Judge about some other conditions of inmates once they get classified and get sent there?

I believe you looked at property and recreation, telephone and visitation, and the security member—measures that were placed upon them and programming and such.

Would you please let the Judge know what you found there, both as it relates to accepted correctional practice, and also in comparison with the other institutions as you've defined them?

A. I looked at the—at the property allowed as one of the instances that I think that is important, including clothing, hygiene materials, personal property, access to the commissary.

I found that to, in most instances, quite honestly, far exceed that allowed in similar extended [891] control facilities around the country.

Each jurisdiction has its variations, of course. The commissary amount allowed at OSP far exceeds that not only of most extended control facilities, but probably exceeds that of many general population institutions around the country.

The actual property allowed, whether somebody has access to the commissary or not, the amount of property allowed increases much quicker at OSP than other extended control facilities around the country, going from a Level 1 to a Level 2, to a 3, to a 4.

And I think in that instance, not only is it quite generous, but is a cognizant factor that it is important to actually move people quickly into the lower privilege levels.

I might add that my observation of the more recent policy effective March 1st is that that enhances that once more.

Q. Did you find an inordinate number of people on Level 1? You mentioned Level 1 as a level concerning property.

What did you find concerning the numbers of inmates that were on Level 1, and what did you think of it?

A. Actually, if I recall, without thumbing through my report, there were less than 30 people on inmate—on [892] Level 1 at the time that I first visited the institution.

I was a little bit surprised by that because in most jurisdictions you probably see the break-out be roughly thirds; a third on Level 1 depending on the jurisdiction's names for it, a third on 2, and a third on 3.

It—they are moving the people through quite quickly through the Level 1 phase, and the number that have been there for extended periods of time were extremely small. And that, of course, is quite limited in terms of property, but if you are moving people through quickly, that would be of less concern to me professionally.

Q. What did you find concerning recreation, both in frequency and the facilities?

A. I paid particular attention to that because that, obviously, was a major concern expressed in the original complaint.

And I observed it, I talked to inmates about it, both cell-side and otherwise, as well as was able to observe—to talk about and to look at the plans for future solutions for recreation.

If I compare to other extended control facilities in the country, I would have to say that the existing spaces would be adequate. Certainly the inside [893] recreation is adequate in inclement weather. The external spaces, I guess I would say, would be adequate but not desirable; that I would desire something else.

And I was pleased to see that the plans had already been—were being drawn at the time that I first visited during my second visit in November. I was able to review the architectural drawings for the outside plans. I accompanied the warden on a tour of the outside so I could see what those plans would look like on the ground on the outside of OSP. And obviously when completed, I think will far exceed the outdoor recreational facilities I've seen in extended control facilities around the country, many of which I might add do not have outdoor recreation in the sense that the new ones at OSP will have.

Q. Are there some that have what OSP has now?

A. There are.

Q. What—how does the frequency of recreation compare to accepted correctional practice?

A. It meets certainly any existing correctional standard, and it meets or exceeds, in terms of the frequency allowed at each of the levels, Level 1 through 4.

Q. I know my kids count it as recreation. What about the television?

A. Well, I see the value of the television, although I'm sure it's used in many instances for that, I think the [894] value of the television in this particular setting is primarily two-fold.

One, I think it's a stimulus for the human mind. And I think comparing that to the facilities around the country that have no television whatsoever, and in many instances no radio, and in many instances no Walkman sets, in those instances the stimulation for the individual is terrible.

What I found here was not only is it available to anybody that doesn't abuse the privilege, but a wide variety of programs are available, not only for recreational purpose but for religious, educational and other purposes, mental health purposes.

Q. Could we move to telephone and visitation?

What did you find there?

A. I found that the access both under the old policy and under the new policy are—again, meet or exceed any generally acceptable standard around the country.

I was pleased to see that even prior to my first visit, after concerns were raised about the absence of weekend—I'm sorry, this is just not working.

I can—

THE COURT: I can hear you.

THE WITNESS: It goes off sometimes.

MR. LANDES: Can we ignore it? Can we push [895] it down? Is anybody—are you having trouble?

MR. LOBEL: I can hear.

THE COURT: Just stand back from it a little bit. Point it directly towards your mouth is the best way to get it; not up.

Why don't you lift the neck of it and point it in that direction? That should work better.

THE WITNESS: Okay.

MR. LANDES: Thanks, Your Honor.

A. I was pleased to see that prior to my first arrival, that the—when the issue of weekend visitation became an issue, that it was resolved, and at least two weekends a month are now available for visitation at the supermax portion of OSP.

The frequency of visitation allowed is certainly quite generous.

The other advancement I had seen during that period of time was the implementation of removal of the black box during visiting with the installation of eye hooks in the floor that the inmate can be secured to. It's both, I think, an issue of comfort as well as less intrusive to the visitor. And I was able to see both the fact that those had been installed and to see it actually being used.

Q. Did you observe, I guess related to that, did you [896] observe inmate communication from cell-to-cell?

A. I did.

Q. What did you find there?

A. I found that inmates, you know, on the pods in the living units were communicating with each other through—from cell-to-cell, both verbally as well as I was told in other ways that are common, which can be anything from signalling, limited signalling, to knocking on the wall, to a variety of other techniques that are used for communication.

But, yes, communication does occur on the living units.

Q. I'd like to show you what's been previously marked for identification Defendant's Exhibit MM, which is actually an excerpt from your report previously provided to the plaintiffs.

And I wanted to ask you about your conclusions concerning the use of force as this—as it relates to the security measures that are placed against inmates and their conditions in that respect.

What did you find concerning use of force at Ohio State Penitentiary?

A. There are two things that I was looking at, and one is the use of force and one is the use of chemical products and force issues. And I think that's important.

[897] In many of the newer extended control facilities that I've had the opportunity to visit, we found an expansion of the use of force for a variety of reasons that maybe are not relevant here, but nevertheless occur.

And so I charted out the reported instances of force. And it was quite pleasant to see that the reverse of that trend has happened here.

The '98 numbers of course are smaller because they reflect only from May until December 31st of 1998 and the population was slowly growing during that period of time. And so it's not a fair thing to show this massive increase in '99 as being reflective of heavy use, but I think it's quite

instructive to see the drop from 12.75 average in 1999 to the 5 in 2001 for the eight months.

And that suggests to me that, first of all, people are paying attention to it as an issue, that force is not being abused, and I can suggest that I can point to a number of jurisdictions around the country where your figures would be several times this.

And if you look at their first three years or four years of operation, you will find it be many, many times this and growing.

Q. I show you what's been marked Defendant's Exhibit OOwhich is also an excerpt from your report, and it indicates that it's from Page 17.

[898] What does that analysis entail?

A. That, too, is interesting to me particularly when I saw the drop in the use of force instances. Sometimes jurisdictions will replace that with the use of chemicals, and was, I think, quite pleasing to me to see that that was not a replacement thing that was happening.

That, indeed, the same trend we saw in general use of force is happening also in the use of chemical agents.

THE COURT: What do you mean by "chemical agents"?

THE WITNESS: Chemical agents could be a variety of things, but they can be a—typically a CS-type tear gas that can be applied either individually by an officer or in larger amounts through a gas gun, gas grenades, or a variety of other delivery systems.

THE COURT: Okay.

MR. LOBEL: Your Honor, just—counsel asked him about Exhibit MM.

I don't really want to interrupt his testimony, but we looked—we don't find any Exhibit MM in any of our volumes.

It goes up to GG.

MR. LANDES: Yes, Your Honor. It is actually an excerpt of the entire report, and given the Court's

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[900] population institutions, reflect the use of chemical agents in a crowd of inmates, but that would not be true at OSP.

THE COURT: Okay.

MR. LANDES: Thank you.

BY MR. LANDES:

Q. Sir, I'd like to ask you about how programming at OSP compares with accepted practice.

A. Accepted practice is somewhat difficult to talk about in—from a national perspective because, A, there are no standards for extended control facilities and the practice varies widely.

If I looked at it as a continuum of the jurisdictions where I personally have observed extended control facilities and their programming, OSP provides as much or more as any facility I have seen, including the Federal Bureau of Prisons' facility at this point in time.

They have enhanced that again. It was another one of those things I was pleased to see from the time of my visit in August to my time of visit in November.

The amount of programming available on the television is virtually unlimited. A singular inmate probably can't watch everything that's available now on the controlled channels, on the dedicated channels. But I think—and a great deal of programming was going on cell-side both through the GED people and others, religious and [901] mental health people.

But I think the addition recently of the program booths, the ability to collectively program both in education and mental health and in other types of counseling, is a major enhancement that you find in almost no extended control facilities across the country.

Q. Did you observe congregate programming?

A. I did.

Q. How was that done?

A. In two instances I observed a GED teacher with a couple of inmates in program booths where there were several booths linked together above the living unit, on a cross-over above the living units. And then I sat in briefly with four inmates who were in a counseling session with the case manager.

I also have been asked and received permission to talk with those inmates for a bit, broke up their class for a little bit.

I think it was fairly new. The programming at that time, the congregate programming I think had been going on for a couple of weeks before that visit, and but I think this was the second or third time that those particular inmates had been involved in this kind of session.

Q. How rare is that for this kind of facility to have [902] this kind of congregate programming?

A. I know of only three other facilities in the country that have similar kinds of program booth accessibility that are extended control units.

Q. Are you aware of plans to expand this kind of congregate activity?

A. I am.

Actually that again was a work-in-progress. When I first visited the facility, there were one or two located in the—I guess what was called the barber shop of the housing unit.

And in my subsequent visit they had been placed in all of the cross-overs above the housing units in groups of six, and I was shown the areas that they would be placed in for larger accessibility in groups of eight and possibly up to 16.

Q. Within the continuum of the range of restrictions and sanctions and conditions under which inmates find themselves in your experience, how does OSP fit?

A. I—I was, quite honestly, very pleasantly surprised and part of that I guess is I've seen some of the worst in the country, but I've also seen, I think, what would arguably—people in the profession would arguably say are the best.

OSP is in the top two or three in terms, in [903] my impression, both in terms of limitations on who goes in, the efforts to get them out after relatively brief periods of time, the amount of stimulation available both in the cell and the attempts to improve the delivery of services to the inmate outside of the cell.

Q. How does this place compare to, let's say, Texas or Florida?

A. I could probably best simply describe what conditions would be in those instances.

In Texas, through the top three levels, there would be virtually no property available, other than basic hygiene items. And in Level 1, even basic hygiene items are strictly controlled.

There would be no television, either congregate or individual. There would be no radio through the top three levels.

And for an inmate to work themself through the top three levels in Texas, if they can work through at all, which in most cases doesn't happen, would take somewhere between eight and 10 years or an ending of their sentence.

Many never, if they are identified as a Security Threat Group member, they simply don't get out unless they renounce that membership, which seldom happens.

The access to telephone is almost [904] nonexistent. Legal access was somewhat interesting during my visit in that telephone calls to attorneys were taped, monitored and taped, monitored by staff and taped. And that's just sort of an anecdotal expression of the conditions in Texas.

Florida is not much different. Their terminology is close management, but the conditions are the same as OSP in generality. However, the numbers of people being sent there and the privileges they have are negligible compared to OSP.

Q. Is there—you said similar to OSP in some respects.

Are there certain common themes in extended care facilities, in extended control facilities?

A. Well, the common theme I look at is simply the fact of identification of who goes into such facilities.

The fact that they are, for all practical purposes in—the only time they are unrestrained, in personally unrestrained conditions are when they are in their cell, and that that typically is 23 or more hours a day, 7 days a week for an extended period of time.

Q. Is there an institution in Florence?

A. There is.

Q. What is that?

A. Actually the Federal Bureau of Prisons has a couple of prisons there, but the one related particularly to OSP [905] would be what the Federal Bureau of Prisons calls their Administrative Maximum Facility.

Q. And how does—you told me something about the doors there.

How does OSP compare to Florence?

A. Actually I think my comment was that I think the Ad Max facility run by the Bureau of Prisons is seen as being probably one of the more thoughtful institutions in the world in a variety of ways.

One, they, for a long time, have excluded persons who are on psychotropic medications or seen as seriously mentally ill. This goes back to its opening.

They also allow televisions in most of the rooms, and accessible for programming as well as recreational use.

In most of the doors in the Ad Max, however, are double-doored with a cell front door, a short sallyport or vernacular for space, with another door. And so if one looks at the deprivation factor and the isolation factor, it's more severe than anything that exists at OSP.

Q. Within the range of conditions with which you are familiar, sir, where does OSP fit?

A. I would say that it's—it's, again, I would say it's one—in my impression, it's one of the top one or two at the moment of any of the facilities that I have seen [906] that run extended control programs.

Q. What seems to be the trend for OSP?

A. I think the—I have been—again as I think I mentioned early on, particularly with the activation of a new institution, there are a series of problems that people run into and particularly when the concept of that institution is a new one to a jurisdiction.

I have been very pleasantly surprised not only with the improvements that have been made and enhancements that have been made, I think that the leadership that's shown, both locally at OSP as well as the DRC, show a great deal of administrative concern over assuring that it's run responsibly and consistent with or even better than generally accepted standards.

MR. LANDES: Thank you, Your Honor.

Just a moment, please.

(Pause).

MR. LANDES: That's all we have, Your Honor.

THE COURT: Thank you.

Would the defendant make any cross-examination you wish to make—or the plaintiff make a cross-examination?

MR. LOBEL: Thank you, Your Honor.

* * *

[908] certain types of confinement, particularly if that confinement is atypical of the norm, has frequently been one of the yardsticks Courts have used in evaluating the constitutionality of a program."

Now, when you wrote that, you were—this was in the context of supermax confinement?

A. That extended control, yes.

Q. Extended control.

A. Um-hmm.

Q. Do you consider extended control facilities atypical of the norm?

A. I do not.

I do not in and of itself. I have found in my subsequent travels around the country in a variety of roles that there are some jurisdictions that make extended control experience an atypical one for different reasons in different jurisdictions.

In and of itself, I do not see the super—the extended control, the use of extended control within a jurisdiction as being atypical.

Q. Well—

A. I did it myself in each jurisdiction I was in, I might add.

Q. You did write in this that duration of certain types of confinement may be used as an evaluation of the [909] constitutionality.

And when you talk of duration, what were you referring to, what type of duration?

A. I think that varies depending on cause.

For example, I think that there have been cases over the years where the use of disciplinary segregation, for example, for unseemly lengths of terms for the use of discipline has been found to be unconstitutional.

Now, having said that, I think if—if supermax status or extended control status is used appropriately within—in a correctional jurisdiction, that that length of stay then has to be related to some condition that the inmate has presented that suggests that they are going to be a continuing threat, a continuing threat to that jurisdiction's safety.

Q. An ordinary prisoner in your experience in Washington and other jurisdictions, would an ordinary, typical prisoner be sent to an extended control facility?

A. No.

Q. Isn't this, in your opinion, only for very small percentage of prisoners?

A. In my opinion, yes

Q. This type of extended 23-hour-a-day control?

A. Absolutely.

[910] Q. And, therefore, the typical prisoner might be sent to disciplinary control or some other forms or lesser forms of administrative control, but not to this type of extended control facility?

A. I believe that to be true and appropriate.

Q. Now, in your comparison of outdoor recreation, let's start with your position as executive director in Washington.

Were there any facilities in Washington, prisons in Washington for the long-term incarceration of people that had no outdoor recreation? And what I mean by that is recreation that takes place outside of the building.

A. There were.

Q. There were? What kind?

A. There were, at the time that I was the secretary, which was the accepted title at that time, three intensive management units, two of which were 90 beds, one of which was 110 beds, that were located physically or geographically congruent with three separate major institutions around the state.

Each of them had a recreation area that I think would not meet your description of outdoor. It was a -- it was an area that was attached to the living unit that it's—it was probably two or three times the size of [911] the recreation areas combined in present OSP, but had simply an opening at the top of the roof that allowed fresh air and sunlight in.

Q. When you say an opening, was it a small opening or a—

A. It was an opening that would probably be a foot and a half to two feet.

Q. And—

A. And I might add, that was—there was razor wire inserted in that opening, so it wasn't a clear opening.

Q. And you say that was at the time you were director?

A. That's correct.

Q. Is that true now, also, do you know?

A. It is also true, there are additional ones now. I mention only in terms of numbers.

Q. In terms of the other super—extended control facilities, other supermax prisons, let's take Texas and Florida.

Do they have an area where the prisoners actually went outdoors, where it was outside of the building?

A. Yes. In Texas they are called the dog cages. They are small cages that a person can go out and be locked into individually. No congregate recreation.

In many instances the cages are probably 20 [912] feet long and eight feet wide.

Q. When you talked about Washington before, you mentioned these extended control facilities.

Were there any other prison situations where, as a regular matter, prisoners didn't have outdoor recreation apart from the extended control?

A. Only—only medical units and/or some psychiatric units.

Q. So all of the other prisons in Washington had outdoor recreation except for these few extended control—

A. Of some type, yes.

Q. —facilities?

Now, is it true that most supermax facilities denoted as supermax, or that many supermax facilities have some kind of outdoor recreation of the type you described in Texas or elsewhere?

A. If one includes, you know, the Texas dog cages, yes, my answer would be yes.

Q. So the OSP-type of facility where it's actually inside the building is not the usual practice even in these supermax or extended control facilities?

A. There aren't many that I know of that are designed specifically like that, but there are several that I have visited that would have—would not have the complete outside recreational experience that I see planned at OSP, [913] for example.

Q. Right. There are several, but you visited many?

A. That's right.

Q. So I assume most don't.

Most have some form of outside-the-building creation?

A. That's right.

Q. Even in these extended control facilities.

Now, back to your monograph for a minute.

Well, let me just ask you, once an inmate gets placed at a supermax, in your opinion is it important that they receive periodic reviews?

A. It is.

Q. And how often would you say they should receive those reviews?

A. I think that is related to the rigorousness of the criteria that places inmates there in a jurisdiction.

If the criteria for placement is significantly rigorous, then the population of that facility is going to be a fairly dangerous, if you will, threat, either to individuals or to the collective system. And in that instance, I think the frequency of review is not required as frequently as if the population is a less-threatening population, would be my opinion.

And in the instance of OSP, first of all, I [914] think their old review period was more than adequate, and their new one is even more frequently, at least for the privilege levels which relate to eventually release.

Q. So the one year, is that what you are referring to?

A. Yes. I think initially for one year, although in the new policy the privilege level review can happen more frequently.

Q. Turning to Page 8 of your monograph, you write, right there which I have starred, "Objective classifications also provide, generally provide inmates with a known path for moving to less secure facilities."

Do you consider that an important aspect of extended control facilities, to have a known path for inmates to move to a less restrictive facility?

A. Well, that particular statement is about system—classification systems in general, that, yes, there should be a known path for progressing in a system.

Q. And then on Page 10, you say "Ideally," do you see that part underlined, "ideally," or blocked out, "Ideally, specific criteria should be developed, along with a process for assessment, that would allow the inmate to transition from an extended control facility to lesser levels of custody and security."

And then at the very end of that you say "Failure to provide some transition or release mechanism [915] will not only create a sense of hopelessness among many of the inmates, but will cause the overuse of costly high-security beds."

In these extended control facilities, do you find that there is a sense of hopelessness among many of the prisoners?

A. Yes.

Q. Okay. Now, at OSP, in your opinion, did OSP have specific criteria for inmates to follow to obtain release back to general population?

A. I believe it does.

And with the caveat that the override system always is available.

Q. Where did you find that specific criteria?

Could you tell us where, where it is?

A. In the classification policy.

Q. Well, which part?

Do you have the classification policy there?

A. I do not.

Q. Okay. Are you referring to Policy 111-07?

A. I'd have to look at the numbers. I'm sorry.

Q. You can look at your notes.

Tell me from your notes which policy you are talking about.

A. I do have a copy of the policy.

* * *

[920] Q. It is pre-March 1st, that's correct.

Could I see that back?

A. (Handing).

Q. Now, Mr. Riveland, did you do any study or review of inmates' files or records to determine whether inmates who had, in fact, taken these programs, had good behavior, had no conduct reports, completed GEDs, actually were released to general population?

A. I did no study to that effect, no.

Q. Did you do any investigation of that at all?

A. Only looking at the total numbers of admissions and releases.

Q. What if I told you that we heard in this case from a number of prisoners who have said that they had good conduct, they did everything that they could probably do, the system set up for them to do, and yet were not released and have not been released for a number of years?

A. I guess I'd want to know all of the information.

That behavior in and of itself is not reason for release, particularly if a supermax facility or extended control facility is rigorous in being careful about who they place in such a facility.

For example, I'd want to know what the original offense was that placed the person in that facility. Was it a multi-murder of 25 staff or two staff [921] or one inmate, or were there multiple escape attempts? Is the person a leader in a Security Threat Group?

That behavior in and of itself would not be compelling for me to say there is a problem.

Q. That's fair enough. Mr. Riveland, let me give you a hypothetical, purely a hypothetical situation.

Let's say a person gets put into OSP after being hit on the head with a spatula and the reason that's given for putting him—he was hit on the head with a spatula by another inmate. He didn't do anything.

The reason that's given is that he is a—involved in a gang. He doesn't have any particularly serious violations, but he's been involved with a gang.

I mean, he's not the type that you described.

He then does everything that's asked of him at OSP, and he goes to a committee and the committee recommends that he get released.

Goes up to a much higher level, person at a higher level recommends he gets released.

Then some other official says no.

And let's say he's been in this institution now for three years.

Would that trouble you if you heard that about some institution?

A. It wouldn't trouble me initially because I don't feel

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[924] THE WITNESS: 4548.

THE COURT: Did you say he was Volume 4 or—

MS. O'BRIEN: Are you talking about the profiles?

MR. LOBEL: The profile in all of them except this one I have, he's in Volume 2 and he's at MSC 004548. They are by numerical order, and it's 208 is the number on top.

THE COURT: I'm sorry, the Bates number 4?

MR. LOBEL: At the bottom there is an MSC number.

THE COURT: Yes.

MR. LOBEL: MSC 004548.

THE COURT: Okay.

THE WITNESS: Counsel, could you repeat your question to me then?

BY MR. LOBEL:

Q. The question is apart from individual, initial placement, if this person had done everything that was asked of him at the institution at OSP and had been reviewed by the committee and recommended to be sent out, if you were using your professional judgment, do you think that he should be sent out?

A. My response would be somewhat similar as it was before, that I don't have enough information, and I base [925] that really on the last page of that profile in which it indicates that the north regional director Steve Huffman in his response indicated that he was identified as a leader with the AB, et cetera.

I guess that would lead me to want more information. I'd want to know what that meant.

Your initial description of behavior in and of itself and given his prior history, sure, that would say, sure, let's—I would question, I would say why is it we are not releasing him.

But that statement alone would make me pause and say there's something else here I don't know.

Q. In your monograph, don't you say—correct me if I am wrong—that gang membership or even gang leadership ought, in and of itself, ought not be sufficient to get into an extended control facility?

There ought to be some act of violence or some—some action, some behavior?

A. I think that membership and affiliation in and of itself probably should not be.

There are, however, in my experience, in any—not in any, but in most jurisdictions significant Security Threat Group leaders that are continuing to do business on the outside or are an extreme threat to the institution, and that should be sufficient for [926] continuation.

Q. If it was an extreme case?

A. Well, or influential in a variety of ways. And that can take place, one of the common things are continued recruitment or extortion or dealing drugs or that whole variety of—panoply of kinds of actions that if the person is influential in that, I would want to continue that person.

And I don't know about this person.

Q. Yeah. But nothing in what you see would suggest that he should be continued for a long time?

If there's something you haven't seen, that's one thing, but just from what you could read, this doesn't seem—

A. If I were a decision maker at this point and you had come to me with this conflicting recommendation, I would keep him in until I had all the information that sufficiently advised me as to what this one statement suggests.

Q. Okay.

THE COURT: Because I'm curious on this, I'm going to let him take a look at the materials.

MR. LOBEL: Okay.

THE COURT: I'm going to let you take a look at the Security Threat materials.

[927] THE WITNESS: All right.

THE COURT: Then you can try to more fully answer the question.

Why don't you go on to—

MR. LOBEL: Yes.

BY MR. LOBEL:

Q. Just in connection with Mr. Roe, you said in your initial testimony that under three years of time in one of these extended control facilities is not a long period of time, is that correct?

A. I said compared to—I believe I said in relationship to what I've seen in extended control facilities, that's not a long period of time.

Q. In relationship to these extended control facilities?

A. That is correct.

Q. Is it fair to assume, then, that three years or over is a fairly long period of time, even in comparison to extended control facilities?

A. No, I don't think I'd make that inference.

My choice of the phrase "three years" was based basically on the time of operation of this particular facility, and that's the only history that there is of OSP at this time.

Q. No, I meant you said that statement in the context that under three years' period of time to keep somebody in [928] one of these prisons is not a long period of time.

Does that mean that three years or over would be?

A. If we surveyed, for example, all of the extended control facilities that I personally have visited, five years or more would probably be closer to the norm than the three.

Q. Could I have—oh, you are going to keep that?

THE COURT: Let me ask just the attorneys to approach once.

MR. LANDES: Your Honor, are we dealing with the STG material now?

THE COURT: Let me just try to make a general characterization of it without going into any of the specific statements.

MR. LANDES: Your Honor, I don't like to interrupt, but may I offer an alternative solution?

THE COURT: Okay.

MR. LANDES: On redirect I was going to ask the witness whether it would be good practice to actually consult with the STG coordinator in making the decision.

The next witness up is the STG coordinator. His flight is not until 3:00 o'clock.

THE COURT: Well, he was asked more for the opinion on—not on the necessary practice, but he was

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[933] that looked at this decided that the person should be released, and the chief of Classification looked at it and

decided he should be released, would you release this man from OSP?

A. Given the information I reviewed, I would still have two questions.

One would be what information was available to those two bodies you mentioned, the two recommending bodies, the chief of Classification and the committee; and secondly, I'd want to know more about the STG allegations.

Q. Okay. When you were the director of Washington, you said you did review committee recommendations and you used your professional judgment?

A. Actually I did not on all persons going in and out. I reviewed those who were to be retained in the facility beyond three and a half years.

Q. So anything beyond three and a half years, you had to review?

A. That is correct, if retention was to be part of that scenario.

Q. And why three and a half years?

A. It was the time we chose to place in the policy that isn't particularly relevant. It was just a point that we took it to the highest decision-making point in the organization.

[934] MR. GILBERT: Your Honor, we can't hear back here.

Q. And in general, was it the exception when you overturned the committee or did you—I assume you didn't always overturn the committee.

Can you comment on the frequency with which you overturned the committee?

A. The frequency of overturning the committee recommendation was not common, but it did occur.

Q. It occurred sometimes, but it wasn't common?

A. Yes, I'm afraid I wouldn't have a statistical relationship, but it did occur from time-to-time.

Q. Back to this policy which you testified on, and maybe there's some other—it's 111-07, was there any top—let me ask the question this way:

When you were put in OSP, you generally were put in Level 2, is that correct?

A. That is correct.

Q. And you stayed at Level 2 for approximately how long before you get—you got a review to get out of Level 2?

A. A bit in excess of a year at least.

Q. Okay. A bit in excess of a year.

You then got to Level 3.

How long were you on Level 3 before you got your review?

* * *

[939] reports for at least six months. All other criteria appear to be the subjective decisions of the local and central office classification staff."

Is it your testimony that that would be a unique situation?

A. Certainly the Florida version of that is unique, yes.

Q. You then testified that "The physical conditions observed in the majority of CM 1 units were very austere."

I'd like you to focus on the second paragraph there. I assume you are now listing some of the very austere conditions.

"The doors are metal security sliding doors with a small window at eye level, covered with transparent material and a food/cuff port generally at knee level, that port being covered and locked except when passing a food tray through it, or when handcuffing the inmate."

Do you consider that austere?

A. Not in and of itself.

Q. So when you listed this, this wasn't an example of something that's austere?

A. I think the combination of things discussed in that particular paragraph made the entire setting austere, yes.

Q. I also see you noted "Any communication must occur through a small crack in the side of the door." And then in parentheses "Although the Union Correctional Institution

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[946] release date based on their behavior, programming and progress through levels."

Is that a recommendation you would generally agree with?

A. As long as it contained what I talked about before is the avenues for exception.

Q. Yeah, you would generally agree with that?

A. Generally.

Q. And this is a recommendation made by the quality review team of the Ohio correction officials.

Would you—do you know if this recommendation was carried out?

A. To my—not to my knowledge. In the applicable policies that I reviewed at the time I was on site, in its specificity it was not.

Q. It was not carried out.

So this is a policy which you agree with in general, was not carried out?

A. The part, I guess, one can quibble about months and days and whether there should be six months or eight months or three months or whatever.

The specificity of the length of stay, I think I would have some question as to how that would be worded and applied, and I would want, as I mentioned before, to have exceptions to the process, an override [947] process, if you will.

Q. So you think it's generally a good idea to have a length of stay, but with some exceptions?

A. Yes.

Q. Okay. Do you know if the new policy which you've talked about that comes into effect on March 1st, do you know if that has a length of stay and a projected release date based on behavior?

A. Not specifically, no.

Q. Not specifically?

So it didn't—they still have not implemented that recommendation?

A. No. And I—I think one would have to be cautious before taking a recommendation from any committee and saying you should automatically do that.

I would—I would want to know all of the events and the things that influence making such a decision up front.

Q. Yes.

A. If I were the director, anyway, which is what I inferred your question to mean.

Q. Let's now go back to who gets in.

First of all, you testified that you went around to each inmate and you asked them questions, that's correct?

[948] A. I did not talk with each individual inmate, no.

Q. I'm sorry, no, you went around to—I apologize.

You went around to a group of inmates and asked them questions, is that correct?

A. Well, I—I individually interviewed a number of inmates. I talked to a number of inmates at cell front. And then there were a couple of occasions when I saw them collectively.

Q. And you said you asked what you thought were the compelling questions that were important?

A. That's correct. For me to understand what they—

Q. You asked them whether they have ever committed assault, whether they have been involved in a riot, whether they were a gang member, that sort of thing?

A. Well, as relates to placement there, yes, that's correct.

Q. Placement.

Did you ask them whether they had been involved in—they had any drug offenses?

You didn't—you didn't say that you asked them that. I assume you did not?

A. It may—that would have varied by individual. I did not have that as one of the specifics I asked each of those individually-interviewed inmates, no.

Q. And is that because generally you didn't—that's [949] not generally the types of—type of offense which ought to get you in an extended control facility?

A. Well, it depends. When you say "drugs," that's a very far-reaching thing.

If it's simply an individual caught with a small amount of marijuana that they are smoking, that's not, in my mind, a reason for placement.

If they are dealing drugs or if they are moving drugs throughout an institution or bringing them in, it well could be causative for their placement.

Q. Do you think there are a lot of people at OSP whose sole reason for being there has to do with drugs?

A. If so, I certainly didn't find that in the profiling, the 444 profiles I reviewed.

Q. What if I told you, Mr. Riveland, that I went through something which is an exhibit in this case, which is called Exhibit J, and it is a summary of inmate profiles, so what the defendants did for our, you know, to make things easier is to take all those profiles and summarize them.

And let's take a look at J here.

It's an attempt at a summary.

Do you see Exhibit J?

A. I do.

Q. I'm not asking you to look at anything. I just want you to be familiar with it.

[950] A. I see it.

Q. Now, what if I told you that I went through those summaries and I specifically picked out every inmate whose only reason for being at OSP had to do with drug—drugs of some sort, you know, contraband of some sort and some of them say "major," most of them don't say "major" on that list.

And there are over 50 people at OSP whose only reason for being there, according to defendants' own summaries, are drug offenses.

Now, that wasn't what you found?

A. Absolutely not. I'd be stunned.

Q. You'd be stunned?

A. I would be wondering if they had different inmates at different time frames than the 444 I had.

Q. Well, what if I then told you I went through the profiles of those 50 people and looked at them, and I didn't look—no, I'm sorry, that was not accurate.

Let's say I told you I did a sampling of those 50 people and that, in fact, that summary of profiles was accurate in my sampling.

You'd also be shocked?

A. I would wonder where the numbers came from, over what time frame, because that certainly was not true—In—I wasn't even looking for individuals who were drug-only. [951] I separated them into the categories that I—that you stated and found nothing like that.

In fact, I found that almost every person, except the one person, had a compelling reason for being—for being placed there.

Q. Let's go to that one person you found.

Do you have your notes with you, by the way?

A. I don't have the name of that—of the 444, I do not have those notes, no.

Q. You do have your notes with you, though?

A. I only—no, I brought—I wasn't asked to bring anything, and I brought simply a small sampling to show what kind of notes I did take.

MR. LANDES: Your Honor, if I could, he came from Colorado, not from where he thought he was going to come from when he thought he was going to testify on Monday.

We did ask if he brought the notes that were inquired about—

THE COURT: Yes.

MR. LANDES: —earlier by plaintiffs' counsel, and he did happen to have those as the sample. Those were the notes concerning inmate interviews of the three inmates that they put on.

I wanted to make clear for the Court that we

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[964] Q. And call for some kind of at least a bullpen which is a larger space?

A. That's what it appears to be, yes.

Q. But you never looked at this report when you did your study because it didn't apply to supermaxes, really?

A. For two reasons.

One, that it's my impression that the ACA standards don't apply to supermaxes. That they are, at best, can be—provide some guidance, but certainly aren't the standard. The standard doesn't exist.

Secondly, because I was aware immediately of the plans, the well-developed plans even at that time for the creation of a new outdoor recreation area which far supersedes, I might suggest, what the ACA is willing to accept apparently.

Q. Yeah. That raises one other question to me.

Were a lot of these programs, proposals, changes that you observed, were they instituted or developed shortly after the filing of this lawsuit, just as a time question?

And I know you wouldn't know whether they were developed in response to the lawsuit, but, you know, was this happening prior to the filing of this lawsuit, that they were developing plans for recreation?

A. I can't say they weren't, but I'd have to say that as

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[977] your notes?

Why would he tell you that and also say "By the way, I am a gang member"?

A. I don't know.

And what I don't recall is whether he said he was or is a gang member in the beginning.

If he said he was, and he felt he no longer was, then it could be that he's confused that the gang coordinator would still delay his movement per the committee recommendation.

Q. Mr. Riveland, in your—I ask you to look again at your report.

What did you write that he told you about gang membership?

A. "He states he is also a gang member."

Q. "He is a gang member"?

A. Okay.

Q. Do you think writing a report about whether somebody's a gang member is sufficiently important that you should take a certain degree of care in whether or not it was or is?

A. Absolutely.

Q. But right now you couldn't remember if it was "was" or "is"?

A. At the time I wrote the report, and the reason I [978] trust is that I wrote that within two days of returning from OSP.

It's now several months later.

Q. But if he stated that he is a gang member, isn't that totally inconsistent with what your notes say that he told you about his committee hearing?

A. I don't know that I see that inconsistency.

Q. Okay. Now, at the end of this about this summary, you say "Although none of the above-mentioned inmates state that they like living in the conditions, they generally understand why they have been placed there. They admitted to the offenses that resulted in their being at OSP—all of which qualify for High Maximum placement."

That's what they all told you?

A. That's correct.

Q. So Jason Robb, it is your testimony that Jason Robb told you that he committed an aggravated murder for which he was given the death penalty?

A. I—I don't have my notes any longer so you would have to return those to me.

Q. Sure.

THE COURT: Why don't you put it under the—put it under the thing so I can see it as well?

Q. It says "Sentenced to death." Was on—

A. Could you bring it down so I can see the list,

* * *

[982] raise.

Q. And did you learn enough from them to satisfy yourself about that?

A. That, combined with the review of the profiles, satisfied me that, yes.

Q. Why is that?

A. It seemed that, simply from the discussion with the individual inmates, that they met the criteria that I thought were valid for placement at OSP, and that was reinforced by the collective analysis of the 440 individual profiles.

Q. Bigger issue.

Did you have a systematic concern about the classification of inmates to OSP concerning STG affiliation?

A. Excuse me, I'm not sure I understand the question.

Q. Okay. Leaving the world of three inmates out of 661, did you have a systemic—I'll use that word—systemic concern about the classification practice of sending people to OSP in relation to gang affiliation?

A. It was something I felt that should be addressed, and I was interested and curious about that when I first went to OSP.

Subsequent to that, it seemed to me, from the data that I had at least, the 440 and talking to [983] individuals, that there was no abuse of placement for STG membership only.

Q. What do you rely upon for that opinion?

A. Again the collective information from the 440, and the nine, if you will, inmates who I found in that 440 that were STG and I could find no other stated reason for their being there, as well as just the discussion with a variety of inmates, cell-front and otherwise, that I had during the time that I was there.

Q. Did you have a systemic concern about classification of inmates to OSP based upon drug backgrounds?

A. Not specifically, because although I think the sales and distribution of drugs can be a factor in placing

somebody in a high custody level, I was more interested in the other specific characteristics.

Q. Does drug—does the difference between classifying someone with drug background to max or high max depend upon detail, amounts, whether they were trafficking, things like that?

A. In my opinion it should be involved with the trafficking and frequently it's also an STG-related thing.

It's not infrequent that it's STG-related, and that's why you will find—frequently find the two linked when the person is identified as one or the other, STG leader or a big distributor.

* * *

[990] let me ask the question, it will be clear.

THE COURT: Okay.

BY MR. LANDES:

Q. Go ahead and take a look at this, please, under procedures.

It has assignment criteria and behavioral criteria, and I think I got it all on there in one screen.

Is that within generally accepted practice, those kinds of criteria?

A. Yes.

Q. Okay. Is it a common—also a common practice to use as exit criteria, or let's call it this, retention criteria, the same thing as your entrance criteria?

A. It is.

Q. So in that sense, there is a retention criteria or exit criteria in this policy?

A. In that sense.

Q. Tell me this: In your examination of the practice of retention of inmates at OSP, were those criteria employed?

A. I believe so, yes.

Q. Why do you say that?

A. Having had the opportunity to observe both hearings as well as the—some of the files and talk to some of the inmates, it appeared that there's a general knowledge that one had to mitigate those criteria in order to be either [991] moved down a level or numbers of levels or be considered for release.

Q. Is it also accepted practice to go back over five years in the past to assist in the judgment on classification?

THE COURT: Let me just—try not to lead the witness so much.

MR. LANDES: Yes. Yes, Your Honor. I try to do that for introductory and for efficiency, but I will yield to you, Your Honor.

A. I think for purposes of override, it is appropriate to go back whatever period of time is necessary to assure continued safety for staff, other inmates and the public.

Q. Could you tell the Court whether it's typical for a small percentage of inmates in an inmate population to be confined in high security institutions like OSP?

A. It is.

Q. You were asked about the frequency of review for reclassification and transfer.

What did you learn, if anything, at OSP about the behavioral management plans and the reviews that went in with those?

A. I believe that they were consistently applied. I looked to see if they, indeed, had been following their own policy. They had.

* * *

[993] doors or windows—and windows were not openable at all—just means a retention of either heat or, I suppose, in the abstract weather cold, but mostly heat in the cells.

Q. Thank you.

You were asked some questions about ACA accreditation.

Do you know if, in fact, the ACA accredited OSP both times it saw it?

A. It did.

Q. You were shown actually the first one, the old one.

Do you know what the ACA had to say about recreation in their more recent accreditation?

A. I do not.

Q. Okay. Would you be surprised to learn that they—

MR. LOBEL: Objection.

Q. —did not have an objection to that?

MR. LOBEL: I object to that.

THE COURT: I'm sorry, the question was you would be surprised to learn that they—

MR. LANDES: They did not object to outdoor recreation in the more recent report.

THE COURT: Overruled. Overruled.

Go ahead and answer.

You said you don't know, in any case?

A. I don't know, and I'd be curious. I'm not so sure

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[1020] So it did strike me as a fairly quieter, quiet environment.

Q. We have been having some discussions about inmates who may—let me go back.

When you were there, did you observe inmates communicating with one another?

A. No. I observed there was some indications where they have two inmates who are recreating together, but I didn't—I didn't notice much communication because the inmates were almost always being brought out in isolation with no—I didn't see any contact with other inmates except for those situations in the housing units where they could recreate together.

And that was just two at a time.

Q. We have been hearing a lot of discussion about inmates who may be at OSP for a long time.

A. Um-hmm.

Q. And in your experience, is that atypical?

A. In every ad. seg. or supermax, you are going to have a pool of inmates that are going to spend many, many years in that unit because the nature of the offense that they committed while in general population was so severe that the department simply cannot take a risk on releasing them into the general population, and I guess at the pace the other inmates would be eligible to do that.

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[1023] from the general population, either for protective custody or for mental health reasons or medical reasons or in this case administrative segregation reasons, states do not have scoring instruments that do that.

This is almost always a judgment call, professional judgment call, that's reviewed by a number of individuals and officers within the department based on criteria. But the criteria is purposely—I won't say it's overly broad, but it's broad enough so that, you know, judgment can enter into this decision, because scoring instruments just don't work very well.

It is a very small population they are looking for and so it's almost—it is always based on a judgment call with proper documentation.

Q. The criteria you are discussing that you just discussed, can that criteria for retention be the same as criteria for placement?

A. Well, if you're asking can the retention criteria be scored, is that what you're asking?

Q. No, what I'm asking is you were discussing a criteria for release?

A. I was talking about the scoring system to just classify inmates for the general population.

But to admit someone into administrative segregation or supermax unit or to release them, there are [1024] no—no states that I know of that use a scoring instrument to do that.

They have criteria. It's explicit as it can be made and it's to be based on objective data, but it's not a scoring instrument.

Q. Can that criteria that you just discussed be the same criteria as the entry or placement criteria?

A. For supermax?

Q. Yeah. Well, yes.

A. Well, no. I think it would be different because to get into a supermax, you are basically looking for have they participated in a serious incident that warrants their removal.

To be released from the unit, you would look at the incident that resulted in the admission, but then your primary concern is based on the inmate's behavior in the unit and his attitude and how the entire prison system is operating, is it safe to release this inmate back to the general population.

Q. Can you make that determination only on objective factors?

A. Well, there are factors that you would look at that need to be evaluated and that should be done based on objective data, but ultimately it's going to be a subjective judgment by a person or an office which is going [1025] to be based on their experience and how they feel about the risk.

So it's analogous to what we have now in the airlines. When a pilot feels, you know, he doesn't feel that you should be on that plane because you might be a risk, he's looking at criteria. But ultimately that pilot has the authority to make a judgment call.

And that judgment call is necessarily subjective.

Q. Did you see that happening at OSP for the release?

A. I did not—I did not observe the release decision-making process so I cannot tell you.

I just—I just noted how many people were being released. So I did not observe that decision-making process.

Q. Based on the number of releases that you saw, did you have a concern with the release procedure?

A. No, the only concern that I had which was noted in my report was that the committee which initiates the recommendation was recommending either being placed in another level or released more frequently than the warden and people outside, and I had a concern that those two parties should be more in sync with their criteria, which I didn't think they were at that point.

But I didn't have—I didn't see anything in

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[1029] Q. Yes.

A. And then you also use that for the release decision?

Q. Can you also use that?

A. Oh, yes. Yes.

Well, I mean, some do obviously. I mean, again the issue on some of these is, you know, these are the indicators that got them in. Are they still reflecting these same areas of concern?

Q. And that Defendant's Exhibit F which seems to have gotten lost on its way to you, on—

A. What's it called?

Q. Defendants' Exhibit—supervision review form, Defendants' Exhibit F?

A. Uh-huh.

Q. On the second page of that document?

A. That's the one I don't think—I don't know if I have that.

Q. Right. On the second page of that document, it has higher custody discretionary overrides.

A. Okay.

Q. And it lists eight different criteria.

A. I've got that.

Q. You have it? Okay.

Could those also be the criteria used for release or reduction or retention?

[1030] A. Yes.

Q. What else would you look at when you—or what else should a department look at if they are looking to reduce someone in security level from high max?

A. Well, again they should be looking at the inmate's behavior in that unit and his, I guess, appreciation of what he did and the reason that—him taking some responsibility for that, and some indication from him that he intends not to get involved in that situation.

Now, the other thing that you've got to look at, even though it may be a reduced probability that that inmate may engage in such behavior, especially violent behavior, if the inmate were to do that, what are the liability issues that the department will suffer if that inmate does engage in behavior that results in serious injury or death to another inmate or staff member.

Because if that happens, they will have serious liability issues when that occurs.

So that's why these decisions are somewhat conservative in nature because let's say you are right 80% of the time, if you are wrong 20% of the time, you'll be suffering greatly in court costs and settlement damages because attorneys are going to argue "Why did you ever release this person who was in supermax and had this history? Even though they were doing fine, you let them [1031] out and they have gone out and done it again."

So it's a very difficult decision to make.

Q. I'm going to ask you to look at the new policy which is Defendant's Exhibit C.

A. Right.

Q. And that's 12 pages long, new Policy 111-07, it's—

A. Dated March 1st.

Q. Yes, effective date March 1st?

A. Yes.

Q. Have you reviewed that policy?

A. Pardon?

Q. Have you reviewed that policy?

A. Yes.

Q. And have you noted any changes from the previous policy to this policy?

A. Well, they have clarified in my—well, there's several things that they have done.

Number one, I had requested in my recommendations that the Bureau of Classification have the final say in the admission and release decisions. And that's now in the policy.

They have clarified a couple of the factors that would get you into the Level 5 category so it's clearer to an outside person.

Excuse me. I think those were the major [1032] changes that I saw which helped, I think, narrow the

classification or the criteria for going in and getting out and also the decision-making process.

Q. The criteria for getting out and what the department should take into consideration can be found on Page 9?

A. Pardon?

Q. Can be found on Page 9 of that report? Can you turn to that page, please?

A. Yes.

Q. And in there, it talks about behavior in the last five years, including—

A. Right.

Q. —to Level 4 or 5?

A. Right.

Q. Should the department only look at the behavior in the last five years?

A. Well, no, they should—I think that may be the focus, but you should be looking at the entire picture.

These inmates, again, these are very special situations, so I would be looking at the entire record of the inmate just to make sure you are capturing everything.

I should also—I didn't mention, they also I think put in time left to spend on the current sentence. And I thought that was important because some of the inmates that I

observed in OSP were getting close to that, their maximum release dates. [1033] So those inmates, inmates who are getting close to their maximum release dates and are behaving properly, would have a higher probability of getting out because you want them to have some kind of decompression on that unit before they get released into the streets.

Q. Just because you are close to your release date doesn't mean you should be let out, correct?

A. No, it's a factor. It's a factor.

In other words, I think whenever possible—and this is a big push across the country is reentry—you want to try to prepare inmates as best you can, and it's not good to have inmates walking directly out of the OSP to the streets. So you would want to try and work that.

But again there are going to be some inmates you wouldn't do that for because of their behavior at OSP or because of other factors that might be relevant. It would be a case-by-case decision.

Q. Would it ever be a good idea in a classification policy to guarantee release after X number of years?

A. I don't think you can do that. I don't think you can do that realistically.

Q. Why not?

A. Well, it gets back to the point that you have to recognize that these are not—these kinds of decisions, [1034] the decisions are based upon the judgment of people that are specialized in this area.

You can't promise anyone release from this. You can say these are the guidelines, and if you do these things in general, people are going to get released, you know, within this time frame.

But to promise release I think is inappropriate for this type of a population.

I don't know how best to describe—how else to describe it. It's just, it's too—too much of a high risk decision where you would always want to have the ability to retain someone in there if you think, you know, they need to be.

Now, the danger here obviously is someone getting caught—and plaintiffs mentioned this to me, their concern, you know, about people being kept there indefinitely without good reason. It doesn't mean that happens.

I mean, you have to give reasonable explanation as to why the person is being kept there. And again from what I've seen in Ohio, the vast majority of inmates are going to be released.

But there's going to be some group, and they have to be looked at case-by-case and people may differ on whether or not it's a fair decision or not, but ultimately

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[1037] Q. You had four major findings, I believe.

Can you go over those, please?

A. Yes.

They had a sound classification process. I'm talking about the overall classification system. And it's a system I'm familiar with, and it's been tested and validated. I understand research has been done underneath it.

And it's a system that restricts the number of people that can be classified as what they call high maximum. So it's not a system that you can easily get put into high maximum. Therefore, most inmates don't go there. In fact, a very small percentage go there.

The inmates there have good institutional records. When I look through their records, they are behaving. Part of that is because they don't have much of an opportunity to assault people, but even in terms of other areas where they can be written up, I observe very few disciplinary reports since their arrival at OSP.

There is a growing number of inmates who—this group will increase, you know, at some point, by what level I don't know, but will not be released for some time regardless of their behavior, and that's just—you know, that group exists and needs to be reckoned with.

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[1039] areas that I thought it should be—should be changed.

And I think they have done that, though, in the new policies.

Q. So the new policy does address those concerns that you had?

A. Yes. From my perspective, yes.

Q. Dr. Austin, what, in your opinion, is the role of professional judgment or subjectivity in these decisions?

A. It's very critical.

As I say, I talk about subjectivity and subjective decision-making. It's not that it's unfounded. I mean, it has to be founded in data, good information that's been verified.

But once—once you have all that information, I guess much like a Judge, you know, you make a decision based on the information and you are trying to get the best information available, and you are looking at a decision that serves the interests of all the parties. It has to serve the interest of the inmate, but it also has to serve the interest of the other inmates that are out there or the staff who might be jeopardized, whose safety might be jeopardized if the inmate is incorrectly released.

Q. And would it be—

A. So that's—that is by nature going to be a judgment call, but hopefully it's done, you know, looking at all [1040] those factors and making a reasonable decision.

Q. And in your judgment, should that subjectivity be or should the decisions—let me try to phrase a question here. I'm sorry.

Would it be—

THE COURT: I think, if you are going where I think you are going, you have already asked it two or three times already about whether there should be specific rules.